





Age Equality as a Fundamental Right?


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Key Questions

- Can control of discrimination on the grounds of age and age equality be regarded as aspects of the fundamental rights of the individual and if so on what basis?
- What impact is the implementation of EU law on equal opportunities and anti-discrimination having in this respect?



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The distinction between EM and CM

- Employment Mode - the control of discrimination on the grounds of age developed at a high level of technical specificity as an aspect of the law of employment discrimination, (and in other specific areas such as that of provision of services).
- Constitutional Mode - the principle of age equality developed as an aspect of the fundamental rights of the individual at a high level of constitutional generality

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Introduction

- Distinction between two different, and sometimes contrasting, modes of development of the control of discrimination on the grounds of age and of the principle of age equality itself.
 - (1) employment law and policy mode (EM), and
 - (2) constitutional law and policy mode (CM).
- Argument - the implementation of EU law on equal opportunities and anti-discrimination is having some impact in both, but ...
- ...this might become 'stalled' unless attention is given to ensuring that EU law continues to develop at both levels.

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The Impact of EU Law – Between EM and CM

Three kinds of impact of Directive 2000/78/EC upon law and policy in the Member States:

1. Almost all MS have enacted some kind of specific legislation regarding age discrimination in employment.
2. Some MS became more inclined to regard their general constitutional equality provisions as resulting in specific controls upon age discrimination in employment.
3. Some development in the EU institutions of the idea of age equality as a constitutional notion for the EU as a whole; the *Mangold* (Case C-144/04) decision in the ECJ represents a high point for that development.

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The National Starting Points – Between EM and CM

- How far age equality law and policy had developed in each of the two modes by the time of the enactment of Directive 2000/78/EC?
- Only a few MS had specific legislation regarding age discrimination in employment
- Many MS had general constitutional equality provisions, but these were not generally seen as resulting in specific controls upon age discrimination in employment

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The Impact of EU Law – The Risk of Stasis between EM and CM

1. Many MS might regard ‘copy-out’ legislation regarding age discrimination in employment, i.e. legislation simply replicating the relevant provisions of Directive 2000/78/EC as a sufficient response to the underlying problem.
2. General constitutional equality provisions might produce largely formal rather than specifically effective controls upon age discrimination in employment.
3. The idea of age equality as a constitutional notion for the EU as a whole might become blunted by increasing deference to the policy discretion of Member States and of employers within and across Member States; the *Palacios de la Villa* (Case C-411/05) and *Heyday/Age Concern* (Case C-388/07) decisions in the ECJ begin to suggest that risk.
