

Age Discrimination: Recent Developments

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Current issues

- Article 13 – can it be used directly?
- Article 6(1) legitimate aims – is the scope for justification of direct age discrimination more limited than justification for indirect discrimination?
- What legitimate aims can be taken into account?
- What relationship is there between Article 4 and Article 6 in respect of Age?

C144/04 Mangold

- Contract was for fixed term. Duration based German law making it easier to conclude fixed-term contracts of employment with older workers. Using a fixed-term employment contract did not require any objective justification if, at the start, the employee was over 52 years old.
- By permitting this treatment for workers over the age of 52 the law allowed a difference of treatment on the grounds directly of age.
- Promoting the employment of older workers and countering the difficulties that they encountered in finding work, was a legitimate public interest aim, objectively and reasonably justifying that difference in treatment as provided for in Art.6(1) of Directive 2000/78.
- However, the means used to achieve that legitimate aim went beyond what was appropriate and necessary, since they took the age of the worker as the only criterion for the application of a fixed-term contract of employment, where it had not been shown that simply fixing an age threshold, regardless of any other consideration linked to the structure of the labour market or the personal situation of the person concerned, was objectively necessary to the attainment of the aim pursued.
- Could not be justified under Art.6(1), (Lommers v Minister van Landbouw, Natuurbeheer en Visserij (C-476/99) [2002] E.C.R. I-2891 ECJ)

C-411/05 Palacios

- The principle of non-discrimination on the ground of age laid down in Art.2(1) of the Directive did not preclude a national rule such as the transitional provision.
- Domestic legislation which resulted in the automatic termination of a worker's contract of employment when he reached a certain age clearly established a difference in treatment directly based on age.
- Differences in treatment were permissible if they were objective and were justified in order to achieve a legitimate aim.
- The legitimacy of an aim to regulate the national labour market so as to limit unemployment, as in the instant case, could not be called into question.

C 388/07 Age Concern

- Legitimate aims within Article 6
- Must be social policy aims
- States must prove aims to a very high standard of proof.
- Article 6 and indirect discrimination – what the state can do and what the private employer can do.

C 555/07 Kucukdeveci

- Whether national law on an employee's entitlement to minimum notice of termination is compatible with EU antidiscrimination legislation, in particular whether shorter notice periods for younger employees (under the age of 25) can be justified by the need to provide flexibility in the workforce.
- flexibility granted to employers cannot constitute a legitimate objective in and of itself

C-88/08 Hutter

- inconsistent aims
- National legislation excluded periods of employment completed before the age of 18 from being taken into account for the purpose of determining the remuneration of contractual public servants.
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C341/08 Petersen

- AG Opinion – legitimate aim of ensuring public health.
- national legislation providing for a limit of age of 68 for the exercise of the activity of dentist
- objective aimed at protecting the health of patients included in legal insurance - to preserve the financial legal insurance
- aim of ensuring opportunities for new generations the discounted dentist activity
- permission to carry out the activity of dentist expired at the end of the quarter in which a dentist reached the age of 68.

Current References

- **Rosenbladt C-45/09** - automatic termination of an employment relationship upon reaching a specific fixed age - in the context of established practice irrespective of prevailing social economic or demographics – collective agreements.
- **Syddanmark C 499/08** Member State maintaining a law whereby an employer, upon dismissal of an employee continuously employed for 12, 15 or 18 years must, upon termination, pay an amount equivalent to one, two or three months' salary respectively. Allowance is not paid where the employee, upon termination, is entitled to receive an old-age pension from a pension scheme to which the employer has contributed.
