



# The Mangold – Case Content and Prospects

Matthias Mahlmann

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# Introduction

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- Central case on anti-discrimination law
- Impact on general doctrine of European law
  - Couragous jump
  - Explosive Mixture
  - Pandora`s box
  - Terror of virtue
  - Bomb

# 1. Facts of the Case

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- Fixed-term contract between two parties.
- The employee 56 at the time of the conclusion of the contract.
- In the contract it was explicitly stated, that the sole basis for the fixed term contract was legislative regime for employees over 52 years of age created by the recent reforms of German labour laws regulating fixed term contracts.



## 2. The Legal Background in German Law

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Law on part-time working and fixed-term contracts amending and repealing provisions of employment law.

Paragraph 14 (3) of the TzBfG: fixed-term contract may only be concluded if there are objective reasons for doing so.

Exception: worker has reached the age of 58 by the time the fixed-term employment relationship begins.

Until 31 December 2006, this threshold is lowered to 52 instead of 58.

This exception does not apply if close connection with a previous employment contract of indefinite duration concluded with the same employer.

Fixed-term contracts can be concluded till 31 December 2006 without objective reason

- if the worker has reached the age of 52
- and the mentioned closed connection to a previous employment does not exist.

As the employee was at the moment of the conclusion of the contract 56 years old, this rule applied to him.

### 3. The Decision of the ECJ

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Preliminary reference by lower labour court

Framework Agreement on fixed-term contracts concluded on 18 March 1999

Provision in the Framework Agreement prohibiting the reducing of the level of protection of workers by implementing the Framework Agreement, is violated by the German regulation?

No, because the German regulation not simply an implementation of the Framework Agreement, but measure to increase employment in Germany.

The Framework Agreement thus does not apply (para 44 – 54).



Is the German regulation is contrary to a provision of the Framework Agreement providing for minimum requirements for fixed-term contracts?

Framework Agreement applies only to successive fixed-term contracts.

No successive contracts concluded but only one single contract.

Thus, the provision of the Framework Agreement is not relevant for the case (para 41 - 43).

Questions concerning the Framework Directive 2000/78 and the General Principle of Non-Discrimination

Sources of legal obligation to non-discrimination

*Directive 2000/78.*

Time limit not expired.

Duty of the Member States to refrain from taking any measures liable seriously to compromise the attainment of the result prescribed by a directive (para 67).

Duty of the Member States to report on the progress made before the transposition date, and to detail what measures of transposition have been taken (para 71, 72).

The limitation of the regulation of Paragraph 14 (3) of the TzBfG to the end of 2006 does not change the situation, as many workers will by then have reached the age of 58, which is the relevant threshold from 2007 onwards (73).



## *Principle of non-discrimination*

general principle of Community law (para 74, 75)

This general principle is not conditional upon the expiry of the period allowed for the transposition of a Directive concerning special regulation of non-discrimination (para 76).

Breach of community law:

*I. Difference of treatment* on the grounds directly of age,

Permission to conclude without restriction fixed-term contracts of employment with worker over the age of 52 (para 57).

*II. Justification* for this difference of treatment pursuant to Art. 6 (1) of Directive 2000/78:

*legitimate aim:*

- vocational integration of unemployed older workers (para 59, 60).
- This objective justifies “objectively and reasonably”, as provided by the subparagraph of Art. 6 (1) of Directive 2000/78, a difference of treatment on grounds of age (para 61).

## *Principle of proportionality*

Means “appropriate and necessary”.

Broad discretion in choice of the measures capable of attaining their objectives in the field of social and employment policy (para 63).

Paragraph 14 (3) of the TzBfG transgression of the limits of this broad margin of discretion.

Substantial proportion of the workers in danger of being excluded from stable employment for a considerable part of their working life.

Stable employment, however, is a major element in the protection of workers, as the Framework Agreement clarifies (para 64).

Observance of the principle of proportionality requires every derogation from an individual right to reconcile, so far as possible, the requirements of the principle of equal treatment with those of the aim pursued.

Fixing the age threshold, as such, regardless of other considerations linked to the structure of the labour market or the personal situation of the person concerned, not objectively necessary to increase the inclusion of older worker in the labour market. (para 65).

Community Law and, more particularly Art. 6 (1) of Directive 2000/78, must be interpreted as precluding a provision of domestic law such as Paragraph 14 (3) of the TzBfG.

It is the responsibility of the national court to guarantee the full effectiveness of the general principle of non-discrimination in respect of age, setting aside any provision of national law which may conflict with Community law, even where the period prescribed for transposition of that directive has not yet expired.

## 4. Comments

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- Strengthens the legal effect of directives before the expiry of the term set for their implementation in general
- Clarifies concretely the legal effect of Directive 2000/78 in this respect.
- Direct effect of the prohibition of discrimination.
- Applicability of the exceptions in the Directive independently of national implementation.
- Direct horizontal effect before transposition deadline



- Substantial ruling on the disproportionality of deregulatory measures intended to promote the inclusion of older workers in the workforce
- Principle of non-discrimination as human right of Community Law
  - difference of treatment
  - justification
    - the existence of a legitimate aim
    - use of proportional aims to achieve this aim.
  - direct horizontal effect,
  - possibility of the evolution of a body of non-discrimination law going beyond the existing secondary law

Vielen Dank!

Thank you very much!