

Understanding 'Age' in the Employment
Directive - *Mangold* a step closer?

ERA The Fight against Discrimination
28 November 2006

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Setting the Scene I

- 2003 Werner Mangold aged 56 years enters fixed term contract with Mr Helm
- Contract states duration of contract based on statutory provision, para. 14(3) TzBfG
- para. 14(3) - originally stated no objective justification for FTC needed if worker is 58
- and FTC not allowed if close connection with previous indefinite contract (less than 6 months) with same employer

Setting the Scene II

- Note para. 14(1) - 8 objective grounds for general FTCs
- Para. 14(2) - in absence of objective grounds maximum period for FTCs is 2 years & no FTC allowed if immediately preceded by indefinite contract
- 2002 Para. 14(3) amended to reduce age from 58 to 52 until 31/12/2006

Contd.....

- A-G. Tizzano - Reduction to 52 in light of Govt. report poor employment chances of over 55s
- Goal of successive reductions 60 to 58 to 52 to encourage employment of older persons in Germany (para. 75-77, A-G, Para. 53 ECJ)

Setting the Scene III

- Note Law to promote employment 1996
FTCs exempt from max. term of 2 years if
worker is 60 - applicable until 21/12/1996
- TzBfG Law, 2000 transposed Dir. 1999/70
(F-t work)
- Dir. 2000/78 - Germany waits till 2
December 2006 to transpose age

Questions for ECJ

- Q.1(a) Does Cl. 8(3) (non-regression) FWA, prohibit reduction of protection from 60 to 58?
No, reduction unconnected with implementation of FWA
- Q. 2 Does Article 6(1) Dir. 2000/78 preclude a national law authorising the conclusion of FTCs, without any objective reason, with workers 52 and over?
- Is law against objective justification requirement?

Q. 2 - Three steps of Article 6.1

Step I Para. 14(3) introduces a difference in treatment on grounds directly of age

Step II the vocational integration of unemployed older workers - is a legitimate objective which 'objectively and reasonably' justifies difference in treatment

Step III are the means used appropriate and necessary(proportionate)?

Effects of the national law...

- All workers of 52, without distinction, whether or not they were unemployed before FTC may lawfully be offered FTCs indefinitely until retirement age
- This significant body of workers, *determined solely on basis of age* is excluded from the benefit of stable employment (para. 64)

Fails step III....disproportionate!

- Use of age as sole criterion for FTC and failure to demonstrate this age is objectively necessary to achieve the vocational integration of unemployed older workers
- absence of consideration linked to structure of labour market or the personal situation of the person concerned (para. 65)

ECJ overcame following

- Date for transposition had not expired
- reduction to 52 was unconnected to transposition of Dir. 2000/78
- that law due to expire 31/12/2006
- Horizontal Direct effect - case between two private parties

In doing so...

- Relied *inter alia* on the principle of non-discrimination on grounds of age which must be regarded as a general principle of Community law (para. 75)
- the source of the principle underlying the prohibition of the forms of discrimination in 2000/78 is found in various international instruments and in the constitutional traditions common to the Member States not Directive 2000/78 (para 74)

Finally ...

- Non-regression 2000/78 not asked – Art. 8 and Art. 6.1? But see Q. 1(a)?
- ECJ & ‘quality’ in work
- ECJ does not cite contextual or intersectional aspects e.g. impact of demographic change
- Or particular position of e.g. older women
- *Mangold* progression for all 2000/78 grounds?
- Contrast *Chacon Navas*, Case 13/05 and all grounds?