

*ERA Seminar June 2007*

*The fight against discrimination in practice*

**AGE, the ground we will all meet  
(sooner or later)**

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## Some age limits in Dutch society

- 12 year decision right of living at divorce
- 40 year maximum age for IVF
- 46 year end of right to adopt a child
- 65 year state pension, no more right to minimum wage, no more social security related to work
- 70 year pension age for judges; medical test for prolonging drivers' license
- 90 year maximum age to donate skin tissue

*Reasons to combat age  
discrimination: human rights*

(e.g. see preamble 4)

*Reasons: economics*

Age                      employment rate in EU

20 – 29	71%
30 – 39	76%
40 – 49	73%
50 – 54	65%
55 – 59	44%
59 – 64	12%

(eg preamble 8 and 25)

## Situation before Directive (2000)

Legislation: Ireland

General non-discrimination clauses in constitutions

ICCPR (article 26)

Specific measures for older workers

Outside EU: USA, Ontario, Australia, New Zealand

## Age in the Directive (1)

- application
- no definition of age!
- scope and norm
- direct discrimination can be justified!

## Age in the Directive (2)

- Article 6: objective justification
- General exception (article 4)
- Public safety (2.5), social security (6.2) and armed forces (3.4)

## Article 6 of Directive

Method of testing:

- **Legitimate aim** to age distinction?
- Is age the **appropriate means**?
- Is age the **necessary means**?

Examples still need to be tested!

## Choices for member states

- Scope?
- Relation to existing anti-discrimination law?
- Closed system?
- Positive action (art 7)?
- Equality body?

## State of transposition

All Member States have legislation!

But.... Is transposition in line with directive?

And, other obligations of Directive?

e.g. art 12, 13, 14, 16

## Dutch example (1)

- Art 26 ICCPR
- Art 1 Dutch Constitution
  
- Jurisprudence on these articles
- 60 cases on age discrimination, mainly employment

## Dutch case law under Dutch Constitution and ICCPR

- **Access to employment**  
55 year old civil servant
- **Mandatory retirement**  
Professor of law  
Soccer referees  
Airline pilots
- **Combination gender/age discrimination**  
Cloak room attendants

## Dutch example (2)

### Law equal treatment age in employment (2004)

- Open system (objective justification)
- Same level of protection as grounds in other laws (currently 11!)
- No positive action
- Equal treatment commission
- “normal” judge

## Cases under Dutch law on age discrimination

- Pensions
- Employment conditions
- Recruitment and selection
- Acces to education
- Self employment
- Taking on someone
- Dismissal (also with voluntary work)
- Employment placement
- Social schemes with reorganisation

## Dutch case 2005 - 49

80- year old general practitioner (doctor)

Insurance company: contract ends at 65

Yearly judging of functioning

5 yearly check by branche organisation

## “Challenge” in Holland (and elsewhere!)

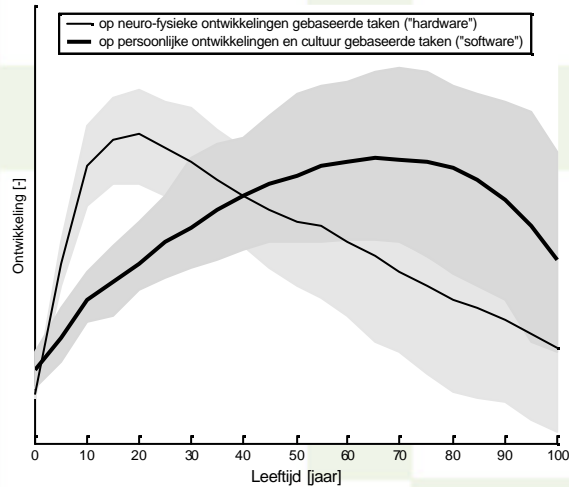
Within labour conditions – “**seniority rules**”  
protection on basis of age

(e.g. no night shift above 55, extra holidays for older people, etc)

?Age as a criterion for protection?



Ontwikkeling van cognitieve competenties tijdens de levensloop



## More "challenges"

- Age as a criterion for labour market opportunities?
- Offices for temporary work – question of responsibility.
- What is discrimination? "student", "young", "pocket money"
- Pension schemes and age

## ECJ on age

**Mangold** (22-11-2005)

**Situation:**

German law on fixed-term contracts

Max: 3 contracts within 2 years

Or 1 contract for 2 years

After that, you need “a good reason” to give another fixed term contract.

The law: Being 52+ is a good reason. (for 2003 – 2006)

**ECJ:** age alone is not enough. Not all 52+ workers in same position. 13 years is long to be in insecure position!

## ECJ on age

Key issues in “Mangold”

- Transposition period for Germany was not over!
- “Principle of non discrimination on ground of age is a general principle of Community law” (section 76)

## ECJ on age

“In the pipeline” of the ECJ

- Lindorfer (2 opinions)
- Palacios de Villa (1 opinion)
- Bartsch (question asked)
- Pascual Garcia (question asked)

## “Coming up next”

Protection beyond employment

Goods, services and facilities directive?

AGE Platform collects cases: 17 areas

## To conclude

### Age cases can be difficult! What helps?

- Have a consistent conceptual framework about role of age and purpose of law (equality is not same as raising labour participation of older people)
- Learn how to separate the myths from the facts with regard to age
- Use ECJ!

## Interesting links

[www.age-platform.org](http://www.age-platform.org)

Europeans Older People's Platform

Under "discrimination" many cases across EU

<http://curia.europa.eu>

To find ECJ rulings

[www.leeftijd.nl](http://www.leeftijd.nl)

Under english section, concept directive goods, services and facilities

Thank you and goodbye!

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