

Discrimination on Grounds of Age in the EU: Recent Case-Law



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Outline

- **Discrimination on grounds of age in context**
- **Limits to the prohibition of discrimination on grounds of age (especially in Art. 6 of Directive 2000/78). APPLICATION OF CASE-LAW**
- **How traditional anti-discrimination concepts relate to age**

Discrimination on grounds of age in context

- **The origins of the prohibition of discrimination on grounds of age:**
 - Treaty of Amsterdam 1997 and the new generation of grounds (Art. 19 TFEU and Directive 2000/78)
 - Comparison with the prohibition of discrimination on grounds of sex (Art. 157 TFEU and Directive 2006/54).
 - Lutz Herrera (CFI 28 October 2004)
- **Age discrimination ranked: less weight attributed to age as a ground for discrimination and Art. 6 Directive 2000/78**
- **Characterisation and peculiarities of discrimination on grounds of age**
 - Stereotypes (young and old)
 - Employment policy

Limits to the prohibition of discrimination on grounds of age

- 1) Genuine and determining occupational requirement: Art. 4.1 Directive 2000/78
- 2) Public security: Art. 2.5 Directive 2000/78
- 3) Access to the armed forces: Art. 3.4 Directive 2000/78
- 4) ... And Art. 6 Directive 2000/78

Limits...

Genuine and determining occupational requirement

- **Art.4.1 Directive 2000/78**

Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

- **Feryn (CJEC 10 July 2008)**

- **Wolf (CJEU 12 January 2010)**

Limits...

Public security and the armed forces

- **Art. 2.5 Directive 2000/78: Public security**

This Directive shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others..

- Enforced retirement on grounds of public security. Prigge, CJEU 13 September 2011

- **Art. 3.4 Directive 2000/78: Armed Forces**

Member States may provide that this Directive, in so far as it relates to discrimination on the grounds of disability and age, shall not apply to the armed forces.

- Comparison with discrimination on grounds of sex (Kreil, CJEC 11 January 2000

Limits...

... and Art. 6.1 of Directive 2000/78

Justification of differences of treatment on grounds of age

1. Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

- *Such differences of treatment may include, among others:*
- *(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;*
- *(b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;*
- *(c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.*

Limits...

...And the case-law applying Art. 6.1 to employment policy

- **Compulsory retirement and employment policy**
 - Palacios (CJEC on 16 October 2007)
 - Age Concern (CJEC on 5 March 2009)
 - Rosenbladt (CJEU on 12 October 2010)
 - Kleist (CJEU on 18 November 2010)
 - Georgiev (CJEU on 18 November 2010)
 - Fuchs (CJEU on 21 July 2011)
 - Hörnfeldt (CJEU on 5 July 2012)
- **Worse treatment as a positive employment measure**
 - Mangold (CJEC on 22 November 2005)
 - Hutter (CJEC on 18 June 2009)
 - Kucukdeveci (CJEU on 19 January 2010)

Limits...

... And the case law applying Art. 6.1 (other aims)

- **Retirement**
 - Petersen (CJEU on 12 January 2012)
 - Andersen (CJEU on 12 October 2010)
- **Experience**
 - Tyrolean Airways (CJEU on 7 June 2012)

How traditional anti-discrimination concepts relate to age

- **Direct and indirect discrimination**
- **Positive action**
- **Shift in the burden of proof**