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The Framework Directive



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The prohibition of age discrimination is an essential part of meeting the aims set out in the Employment Guidelines and encouraging diversity in the workforce. However, differences in treatment in connection with age may be justified under certain circumstances and therefore require specific provisions which may vary in accordance with the situation in Member States. It is therefore essential to distinguish between differences in treatment which are justified, in particular by legitimate employment policy, labour market and vocational training objectives, and discrimination which must be prohibited. (Recital 25)

Article 6(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.

Legitimate aims



- promoting access to employment for younger people (*Palacios de la Villa, Hütter, Küçükdeveci*);
- the efficient planning of the departure and recruitment of staff (*Fuchs*);
- sharing out employment opportunities fairly between the generations (*Petersen, Rosenblatt, Fuchs*);
- ensuring a mix of generations of staff so as to promote the exchange of experience and new ideas (*Georgiev, Fuchs*);
- rewarding experience (*Hütter, Hennigs*);

Legitimate aims



- facilitating the participation of older workers in the workforce (*Fuchs*, see also *Mangold v Helm*, Case C-144/04 [2006] 1 CMLR 1132);
- avoiding the need to dismiss employees on the ground that they are no longer capable of doing the job which may be humiliating for the employee concerned (*Rosenblatt*); or
- avoiding disputes about the employee's fitness for work over a certain age (*Fuchs*).

Fundamental principle of Community law?



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Mangold v Helm

Case C-144/04

Lindorfer v Council

Case C-227/04

Bartsch v Bosch

Case C-427/06

Kücükdeveci

Case C-555/07

Palacios de la Villa

Case C-411/05

Sonia Chacon Navas

Case C-13/05

- Moreover, in law and in society in general, equality of treatment irrespective of sex is at present regarded as a fundamental and overriding principle to be observed and enforced whenever possible, whereas the idea of equal treatment irrespective of age is subject to very numerous qualifications and exceptions, such as age limits of various kinds, often with binding legal force, which are regarded as not merely acceptable but positively beneficial and sometimes essential.

- So far as non-discrimination on grounds of age, especially, is concerned, it should be borne in mind that that prohibition is of a specific nature in that age as a criterion is a point on a scale and that, therefore, age discrimination may be graduated. It is therefore a much more difficult task to determine the existence of discrimination on grounds of age than for example in the case of discrimination on grounds of sex, where the comparators involved are more clearly defined.

- the implementation of the prohibitions of discrimination of relevance here [disability and age] always requires that the legislature make painful, if not tragic, choices when weighing up the interests in question, such as the rights of disabled or older workers versus the flexible operation of the labour market or an increase in the participation level of older workers.

- It does not appear unreasonable for the authorities of a Member State to take the view that a measure such as that at issue in the main proceedings may be appropriate and necessary in order to achieve a legitimate aim in the context of national employment policy, consisting in the promotion of full employment by facilitating access to the labour market.

Retirement cases



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Petersen

Case C-341/08

Georgiev

Case C-268/09

Fuchs

Case C-160/10

- ‘... it does not appear unreasonable for the authorities of a member state to consider that the application of an age limit, leading to the withdrawal from the labour market of older practitioners, may make it possible to promote the employment of younger ones’

Lump of labour fallacy



- David F Schloss (1891)
- The lump of labour fallacy is essentially a belief that the number of jobs available in an economy is fixed. One result of this assumption is that employment opportunities can be created for young people by removing older workers from the labour force. This can result in such policy measures as mandatory retirement or early retirement schemes; putting a ceiling on the number of working hours per week; or measures to reduce the number of women working.

Legitimate aims (retirement)



- (a) encouragement of recruitment is a legitimate aim especially when the promotion of access of young people to a profession is involved
- (b) the mix of different generations of employees can also contribute to the quality of the activities carried out by promoting the exchange of experience.
- (c) establishing an age structure that balances young and older civil servants in order to encourage the recruitment and promotion of young people, to improve personnel management and thereby to prevent possible disputes concerning employees' fitness to work beyond a certain age, while at the same time seeking to provide a high-quality justice service.

Maximum ages



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- Petersen Case C-341/08
- Wolf Case C-229/08

Young workers



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Hütter

Case C-88/08

Kücükdeveki

Case C-555/07