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Judgment of the Court of Justice in Case C-144/04

Werner Mangold v Rüdiger Helm

**THE COURT OF JUSTICE CONSOLIDATES PROTECTION FOR WORKERS
WITH REGARD TO DIFFERENT TREATMENT ON GROUNDS OF AGE**

The objective of encouraging the integration into working life of unemployed older workers does not justify national legislation which authorises, without restrictions, the conclusion of fixed-term employment contracts for all workers over the age of 52

The principle of non-discrimination on grounds of age is a general principle of Community law. In this regard, the purpose of Directive 2000/78¹ is to lay down a general framework for combating certain forms of discrimination, including in particular discrimination on grounds of age, as regards employment and occupation. A difference of treatment on grounds directly of age as a rule constitutes discrimination prohibited by Community law. However, the directive allows the Member States to provide for such differences of treatment and to consider them non-discriminatory if, within the context of national law, they are justified objectively and reasonably by a legitimate aim, in particular by legitimate employment policy and labour market objectives. Furthermore, the means to achieving such objectives must be appropriate and necessary.

The Arbeitsgericht München (Labour Court, Munich) (Germany) has referred to the Court of Justice of the European Communities several questions for a preliminary ruling on the interpretation of Directive 2000/78 in a dispute concerning the German Law on part-time working and fixed-term contracts (Gesetz über Teilzeitarbeit und befristete Arbeitsverträge, “the TzBfG”)². That law authorises, without restriction, except in specific cases of a continuous employment relationship, the conclusion of fixed-term contracts of employment once the worker has reached the age of 52.

¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

² Gesetz über Teilzeitarbeit und befristete Arbeitsverträge und zur Änderung und Aufhebung arbeitsrechtlicher Bestimmungen, of 21 December 2000 (BGBl, 2000 1, p. 1966).

The Court of Justice recognises that **the purpose** of this legislation is **plainly to promote the integration into working life of unemployed older workers**, in so far as they encounter considerable difficulties in finding work. An objective of that kind **justifies, as a rule, “objectively and reasonably”, a difference of treatment on grounds of age.**

However, a provision of national law such as that contained in **the TzBfG goes beyond what is appropriate and necessary to attain the legitimate objective pursued.**

Admittedly, the Member States enjoy broad discretion in their choice of the measures capable of attaining their objectives in the field of social and employment policy. However, according to the Court, application of the national legislation at issue leads to a situation in which all workers who have reached the age of 52, without distinction, whether or not they were unemployed before the contract was concluded and whatever the duration of any period of unemployment, may lawfully, until their retirement, be offered fixed-term contracts of employment which may be renewed an indefinite number of times. This significant body of workers, determined solely on the basis of age, is thus in danger, during a substantial part of its members’ working life, of being excluded from the benefit of **stable employment** which, however, **constitutes a major element in the protection of workers.** In this case, it has not been shown that fixing an age threshold, as such, regardless of any other consideration linked to the structure of the labour market in question or the personal situation of the person concerned, is objectively necessary to the attainment of the objective which is the integration into working life of unemployed older workers.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: DE, EN, FR, HU, PL, SL

The full text of the judgment may be found on the Court’s internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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Pictures of the delivery of the Judgment are available on EbS “Europe by Satellite”, a service provided by the European Commission, Directorate-General Press and Communications,

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