

Case C-144/04

Werner Mangold

v

Rüdiger Helm

(Reference for a preliminary ruling from the Arbeitsgericht München)

(Directive 1999/70/EC — Clauses 2, 5 and 8 of the Framework Agreement on fixed-term work — Directive 2000/78/EC — Article 6 — Equal treatment as regards employment and occupation — Age discrimination)

Opinion of Advocate General Tizzano delivered on 30 June 2005 I - 9985
Judgment of the Court (Grand Chamber), 22 November 2005 I - 10013

Summary of the Judgment

1. *Preliminary rulings — Jurisdiction of the Court — Limits — General or hypothetical questions — Determination by the Court of its own jurisdiction (Art. 234 EC)*

2. *Social policy — Access to employment and working conditions — Equal treatment — Directive 1999/70 concerning the framework agreement on fixed-term work — National legislation reducing the general level of the previously guaranteed protection afforded to workers — Justification based on reasons not connected with the implementation of the framework agreement — Whether permissible*
(Council Directive 1999/70, Annex, Clause 8(3))
3. *Social policy — Male and female workers — Access to employment and working conditions — Equal treatment — Directive 2000/78 establishing a general framework for equal treatment in employment and occupation — National legislation providing for differences in treatment on grounds of age — Not permissible unless objectively justified — Contracts of employment concluded before the expiry of the period fixed for the transposition of the directive also not permissible*
(Council Directive 2000/78, Art. 6(1))
4. *Community law — Principles — Equal treatment — Discrimination on grounds of age — Prohibited — Duty of national courts*

1. In the context of the procedure for making a reference provided for by Article 234 EC, the national court, which alone has direct knowledge of the facts of the case, is in the best position to assess, with full knowledge of the matter before it, the need for a preliminary ruling to enable it to give judgment. Consequently, where the question submitted by the national court concerns the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling.

entrusted to the Court of Justice, which is to contribute to the administration of justice in the Member States and not to give opinions on general or hypothetical questions.

(see paras 34-36)

Nevertheless, the Court considers that that it may, if need be, examine the circumstances in which the case was referred to it by the national court, in order to assess whether it has jurisdiction. The spirit of cooperation which must prevail in preliminary ruling proceedings requires the national court for its part to have regard to the function

2. On a proper construction of Clause 8(3) of the Framework Agreement on fixed-term contracts concluded on 18 March 1999, put into effect by Directive 1999/70 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, which provides that implementation of that agreement does not constitute valid

grounds for reducing the general level of protection afforded to workers in the field of the agreement, domestic legislation which, for reasons connected with the need to encourage employment and irrespective of the implementation of that agreement, has lowered the age above which fixed-term contracts of employment may be concluded without restrictions, is not contrary to that provision.

much as 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 vocational integration of unemployed older workers, and as that legislation therefore goes beyond what is appropriate and necessary in order to attain the objective pursued.

(see para. 54, operative part 1)

3. Community law and, more particularly, Article 6(1) of Directive 2000/78 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding a provision of domestic law such as that at issue in the main proceedings which authorises, without restriction, unless there is a close connection with an earlier contract of employment of indefinite duration concluded with the same employer, the conclusion of fixed-term contracts of employment once the worker has reached the age of 52.

That interpretation cannot be affected by the fact that, when the contract in question was concluded, the period prescribed for transposition into domestic law of Directive 2000/78 had not yet expired. During the period prescribed for transposition of a directive, the Member States must refrain from taking any measures liable seriously to compromise the attainment of the result prescribed by that directive. In this connection it is immaterial whether or not the rule of domestic law in question, adopted after the directive entered into force, is concerned with the transposition of the directive.

Such legislation is not justified pursuant to Article 6(1) of that directive, inas-

(see paras 65-68, 78, operative part 2)

4. It is the responsibility of the national court, hearing a dispute involving the principle of non-discrimination in respect of age, which is a general principle of Community law, to provide, in a case within its jurisdiction, the legal protection which individuals derive from the rules of Community law and to ensure that those rules are fully effective, setting aside any provision of national law which may conflict with that law,

even where the period prescribed for transposition of a directive based on that general principle, such as Directive 2000/78 establishing a general framework for equal treatment in employment and occupation, has not yet expired.

(see paras 75, 77, operative part 2)