

Kasper Lippert-Rasmussen: The EU and age discrimination: Abolish mandatory retirement!

Background information on existing regulations/policy issues/initiatives

Keywords: *age discrimination; discrimination at the workplace; ECJ rulings on age discrimination; ECJ rulings on discrimination; EU age discrimination; EU mandatory retirement; mandatory retirement; mandatory retirement clauses EU; retirement legislation; retirement legislation EU; retirement statutes EU*

Topic: The EU should abolish mandatory retirement

Overview

- European law generally prohibits workplace discrimination on grounds of age. In fact, there are a number of EU directives aimed at preventing discrimination against workers on a variety of grounds, including gender, nationality and age¹²
- However, with respect to workplace discrimination on grounds of age, EU legislation has been repeatedly criticized for being too lax
 - In fact, EU decisions have permitted certain differences in treatment based on age, which are allegedly „objectively justified”³
- Likewise, mandatory retirement has not been abolished, but been enforced in a variety of member states and vocations, because „there is no specific exception for retirement ages at EU level“

In detail

- The issue of mandatory retirement clauses in contracts is subject to a number of EU regulations, most notably:
 - Directive 2000/78EC (also known the “Equality Framework Directive 2000”)
Content: Aims at preventing worker discrimination on a variety of grounds, including but not limited to age.
Excerpt: “Any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community.”
Full document: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>

¹ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/age-discrimination_en

² https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/tackling-discrimination_en

³ <https://www.lexology.com/library/detail.aspx?g=f3de978e-5656-40bd-9239-ca99b6fad2cd>

- However, even though Directive 2000/78/EC clearly states that age discrimination within the EU is unlawful, it has been argued that the very same directive in fact allows for age discrimination:
 - As stipulated in Article 6 of the directive, discrimination on grounds of age can be justified, where, in the context of national law, it is “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”
- Likewise, a number of European Court of Justice (ECJ) rulings⁴ have found that the limitation of contracts on the basis of age qualifies as age discrimination. However, the ECJ also repeatedly suggested under said Article 6 such contracts can be justified^{5,6}. Such cases include, amongst others:
 - Incorporated Trustees of the National Council on Ageing (Age Concern England) v Secretary of State for Business, Enterprise and Regulatory Reform (Case C-388/07)
Content: Addressed the issue of the UK’s transposition legislation, which specifically permits employers to dismiss their employees at the age of 65 years without such treatment being regarded as discriminatory
See: <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C.T.F&num=388/07&td=ALL>
 - Commission v Greece (Case C-559/07)
Content: Following this case, the Greek government was obliged to raise the age of female workers claiming entitlement to an occupational pension so that it is equal to that of male workers
See: <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C.T.F&num=559/07&td=ALL>
 - Donnellan v Minister for Justice, Equality and Law Reform (2008 IEHC 467)
Content: In this case the Court accepted that the retirement age was necessary to facilitate promotion prospects for lower-ranking Gardaí and that this was a “legitimate aim” as indicated by the directive
See: <https://www.staredecisishibernia.com/donnellan-v-minister-for-justice-hc-employment-law-garda-compulsory-retirement/>

⁴ <https://www.eurofound.europa.eu/observatories/eurwork/articles/ecj-rulings-on-retirement-age-and-discrimination-law>

⁵ <https://www.socialeurope.eu/questions-of-age-discrimination-in-decisions-of-the-european-court-of-justice>

⁶ http://europa.eu/rapid/press-release_IP-13-1112_en.htm

Further reading

- https://www.ageaction.ie/sites/default/files/attachments/mandatory_retirement_-_age_action_briefing_paper_1.pdf
- https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/age-discrimination_en
- http://europa.eu/rapid/press-release_IP-13-1112_en.htm
- <https://www.nytimes.com/2007/10/16/business/worldbusiness/16iht-retire.4.7913965.html>
- <http://www.age-platform.eu/policy-work/news/european-parliament-calls-combat-age-discrimination-work-and-rejects-commission's>
- <https://www.socialeurope.eu/questions-of-age-discrimination-in-decisions-of-the-european-court-of-justice>