

Case C-144/04 Mangold v Rudiger Helm [2005] ECR I-9981

Facts: Prior to the implementation of the Fixed-Terms Contracts Directive, German law imposed fixed-term contracts of employment to conditions of objective justification or renewal periods which it did not impose on contracts of employees over the age of 60. The German law implementing this Directive reduced that age limit to 58 and then again to 52. During the transition period where the Directive was not implemented (Germany had taken the option under the Directive to postpone its implementation until 2006), Mr Mangold – then aged 56 – concluded an employment contract with Mr Held. He challenged the validity of the German law reducing the age limit on the basis that it was incompatible with the prohibition of age discrimination apparent in the Community *acquis*, as embodied more specifically in the Framework Equality Directive. Given that the deadline for implementation had not expired, and that this was a horizontal dispute, it was uncertain whether Mr Mangold had a justiciable claim, and so a reference was made to the Court of Justice.

In his Opinion, Advocate General Tizzano argued that the duty of consistent interpretation persisted even prior to the Directive's implementation. Given that the prohibition of age discrimination in the Framework Equality Directive was mirrored in the general principle of equality, the national court would have to disapply the national provision.

Held: The Court held that both the Directive and EU law precluded the national law provision from applying. Firstly, it was reasoned that the indiscriminate application of the national legislation authorising fixed term contracts after 52 without restriction constituted discrimination on the grounds of age. Secondly, the fact that the transposition period had not expired could not affect this finding. Not only was there a duty to refrain from measures liable to seriously compromise attainment of the Directive's aim during the transposition period (Inter-Environnement Wallonie), but the Directive did not 'itself' lay down the principle of equal treatment. The Directive's only purpose was to lay down a general framework for combatting discrimination on grounds of religion or belief, disability, age, or sexual orientation. The actual prohibition against forms of discrimination covered was to be found in general principles of law derived from international instruments and the constitutional traditions common to the Member States. Moreover, the obligation of Member States to report on the progress of implementation presumed that they were not free to take measures in the opposite direction. In light of this, the national court, upon hearing a dispute involving the principle of non- discrimination in respect of age, should provide the legal protection afforded to individuals under EU law – setting aside any provision of national law which may conflict.