



## Age discrimination in EU law (and beyond): contextualizing the relevant case-law of the CJEU

*APPLYING EU ANTIDISCRIMINATION LAW*, SEMINAR FOR LEGAL PRACTITIONERS  
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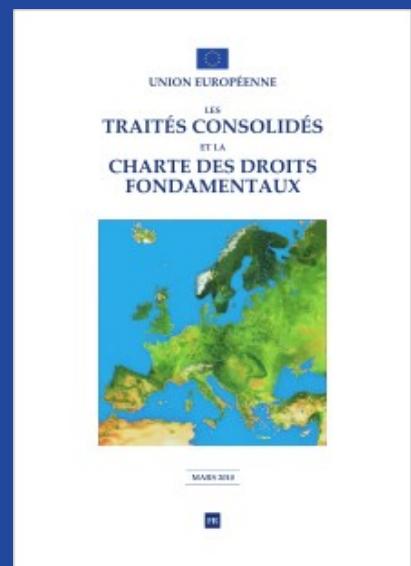
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[www.equineteurope.org](http://www.equineteurope.org)



## Equality on the ground of age in EU law

- ❖ Fundamental values of the EU (Treaties)
- ❖ Non-discrimination in respect of age as a general principle of EU law (Mangold)
- ❖ Charter of Fundamental Rights:
  - ❖ Article 20 (equality before the law)
  - ❖ Article 21 (non-discrimination)
  - ❖ Article 25 (rights of the elderly)
- ❖ Directive 2000/78/EC – Employment Framework Directive



## EU legal framework for equal treatment

Fields/Grounds	Race	Gender	Sex. orientation	Age	Disability	Religion
Employment	YES	YES	YES	YES	YES	YES
Education	YES	NO	NO	NO	NO	NO
G & S, housing	YES	YES	NO	NO	NO	NO
Soc. Protection (Healthcare)	YES	YES	NO	NO	NO	NO
Soc. advantages	YES	NO	NO	NO	NO	NO

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## The age discrimination case-law of the CJEU: an overview

The most "popular" ground – as of 2018, half of preliminary reference based on age (<https://equalitylaw.eui.eu/database/>, period 1970-2018)

Acceptance of age-based distinctions in social polity and labour market

New ground of discrimination - relatively less comparable and relevant national case-law

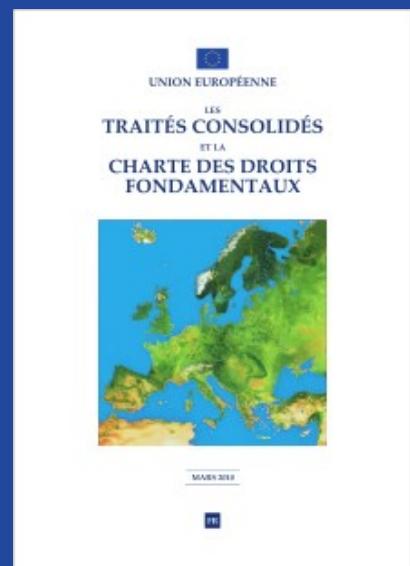
50% of age discrimination references – Germany; Austrian and Danish Courts also high numbers

Large body of case-law guidance on age discrimination: 1) the scope of the Directive 2000/78 and its relationship to the general principle of equal treatment;

2) 2 exceptions laid out in Art. 6:

- Art 6(1) general "objective justification" – direct discrimination is permissible ;

-Art 6(2) – age limits for admission to occupational social security schemes and the entitlement to the benefits (pension and invalidity) that they provide



## The age discrimination case-law of the CJEU and the scope of the Directive 2000/78

- ❖ The Mangold doctrine - the general principle of non-discrimination and now the right to non-discrimination protected by Article 21 of the EU Charter enjoys direct horizontal effect in national law
- ❖ Ole Andersen case (C-499/08) – rejection of severance allowance because of entitlement to old-age pension, vertical direct effect of the Directive
- ❖ Ajos A/S (similar to Andersen but private entity) – not applied by the Danish Supreme

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## This sounds good, or... a limited protection for age?

- ❖ Age as a point on a scale, graduated, not clear-cut
- ❖ Public security exception, genuine occupational requirements
- ❖ In addition: broad justification possibilities: legitimate aim (e.g. employment policy, labour market or vocational training objectives), appropriate and necessary means
- ❖ Such objective and reasonable justification is not available for other grounds in EU law!

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## What is prohibited in EU law?

- ❖ Direct discrimination
- ❖ Indirect discrimination
- ❖ Harassment
- ❖ Instruction to discriminate
- ❖ Victimisation
  
- ❖ But... positive action measures are possible

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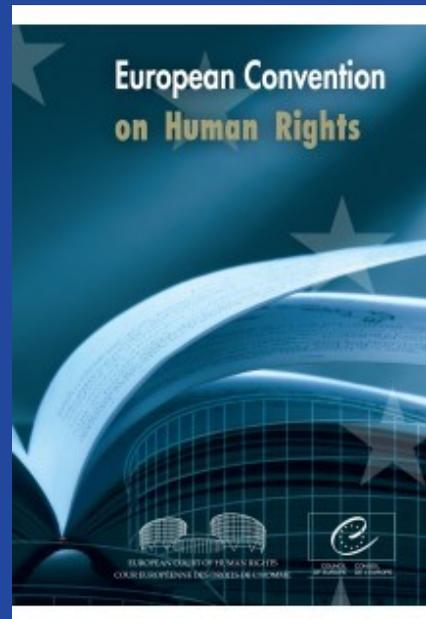
## Wide discretion to states and courts

- ❖ A lot depends on the circumstances and the justification...
- ❖ Under 30 can deduct the full costs of vocational training from their taxable income, for 30+ this is limited
- ❖ Age limit of 30 for recruitment of a local police officer
- ❖ Age limit of 35 for recruitment of a regional police officer
- ❖ Lowering the compulsory retirement age of judges, prosecutors and notaries from 70 to 62 years within the period of one year

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## Equality on the ground of age in the CoE

- ❖ ECHR Article 14: prohibition of discrimination in the enjoyment of the rights and freedoms in the ECHR – age not named, but accepted as ‘other status’
- ❖ ECHR Protocol 12: general prohibition of discrimination
- ❖ European Social Charter: Article E



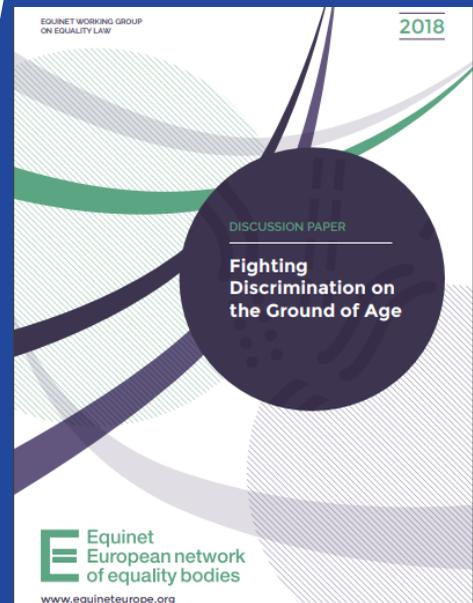
## Equality on the ground of age in the UN

- ❖ Non-discrimination clause in all UN Treaties, with open list of grounds (hence age can be included)
- ❖ 2010: UNGA setting up an Open-Ended Working Group on Ageing
- ❖ Independent Expert on the enjoyment of all human rights by older persons



## Fighting discrimination on the ground of age – equality bodies

- ❖ An Equinet Discussion Paper, based on cases and analyses by 22 equality bodies
- ❖ Published in March 2019:  
<http://www.equineteurope.org/How-are-Equality-Bodies-Fighting-Discrimination-on-the-Ground-of-Age>
- ❖ Legal framework and key issues
- ❖ Employment, goods and services, housing, and health and family issues

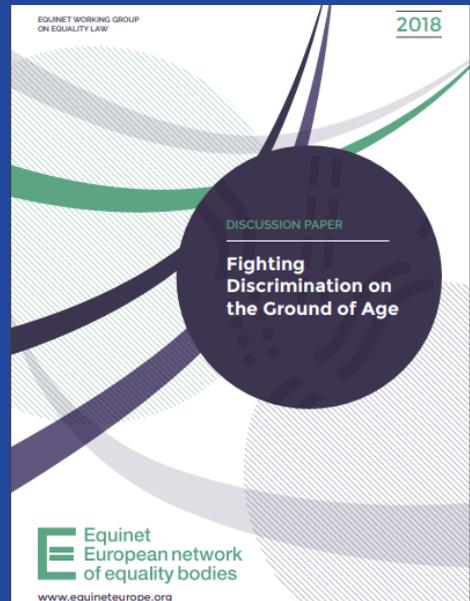


## Key issues

- ❖ Lack of comprehensive legal protection
- ❖ Age discrimination is seen and portrayed as ‘less severe’
- ❖ Ageism present in courts – ready to accept generalisations instead of requiring an individualised approach
- ❖ Ageism often stipulated in legislation or public policies
- ❖ Prevalence of multiple discrimination can result in or exacerbate the experience of discrimination
- ❖ New technologies – opportunities and threats

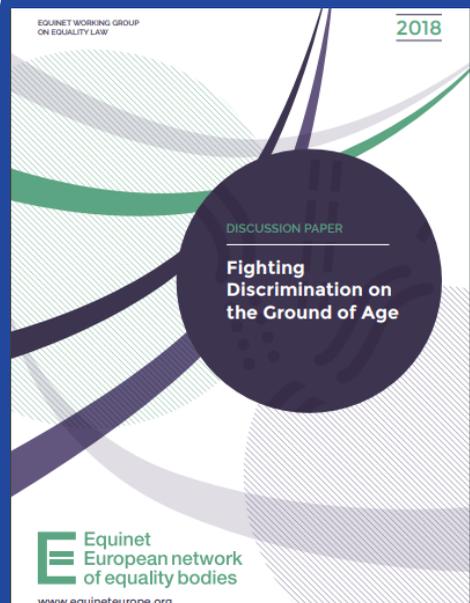
## The case work of equality bodies – employment

- ❖ Government agency recruiting: candidates must be under 40
- ❖ Justification: administrative error, but no applicant was rejected and a number of applicants were above 40
- ❖ Equality body: the vacancy notice could dissuade potential applicants above 40
- ❖ Discrimination established, publication of the equality body's decision



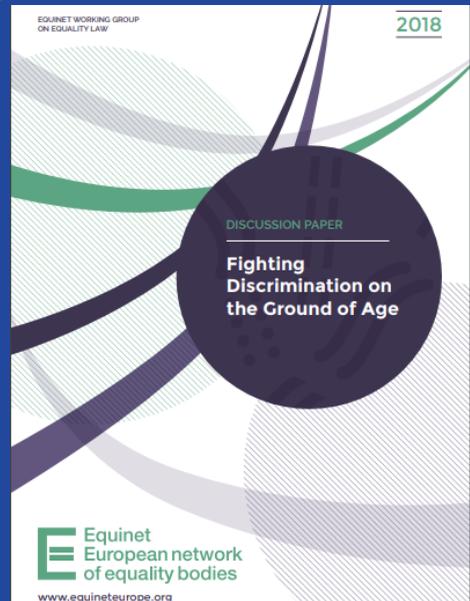
## The case work of equality bodies – goods & services

- ❖ Typical issue: refusal to grant a loan to people above a certain age
- ❖ Discriminatory as non-discriminatory alternatives exist
- ❖ Importance of individual assessment



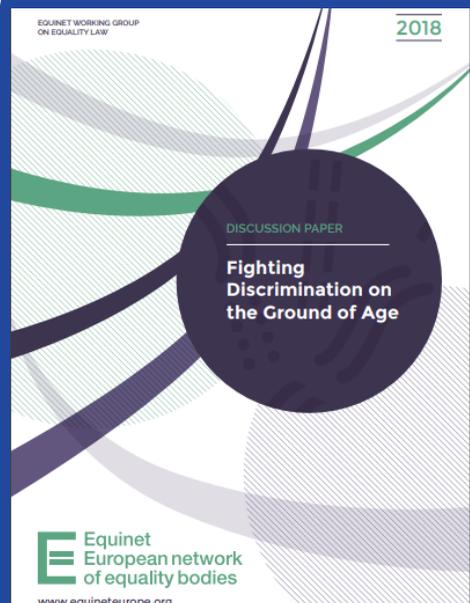
## The case work of equality bodies – housing

- ❖ New apartment building in a student neighbourhood
- ❖ Age limit for residents: 31 years
- ❖ Justification:
  - ❖ prevent complaints about the noise
  - ❖ give opportunity to young graduates to continue living in the city
- ❖ The equality body achieved the withdrawal of the discriminatory age limit



## The case work of equality bodies – healthcare

- ❖ Free preventive annual breast cancer screening only available to women aged 40-69
- ❖ The equality body recommended the extension of the eligible age group in particular due to the risk of breast cancer being highest among women aged 75-79



**THANKS FOR YOUR ATTENTION!**

**ANY QUESTIONS ?**

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