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SUMMARY

The subject of this thesis is age discrimination in the field of employment and occupation with regard to European law and demographic trends. As a result of demographic changes, the number of older people is increasing in relation to the working population. A large number of baby boomers have retired since 2012 while the size of the younger working generation is decreasing. An aging population has major social consequences and may increase pressure on healthcare and pension budgets. There are fears that older generations might become too heavy a burden on the younger, working population, which could result in tensions between the generations. As early as March 2000, the European Council at Lisbon identified the promotion of employment and social inclusion as an overall strategy of the European Union. The effect of promoting active participation of older workers in the labour market therefore materialized. Member States have now taken measures to enable older workers to remain active in the labour market or even return to the labour market. There is a discernible tendency towards older people wishing to delay their exit from the labour market, either by being employed or self-employed. This has consequences for the principles of equal treatment. Combating age discrimination is therefore high on the European Social Policy Agenda.

The pursuit of a high level of employment ultimately formed the basis for 2012: the European Year for Active Ageing and Solidarity between Generations. The objectives of the European Year were therefore consistent with the Union's task to combat discrimination and to promote solidarity between the generations.

This book examines the role of the EU Court of Justice in combating age discrimination and achieving two of the employment objectives formulated in the European Social Agenda namely the promotion of active ageing and intergenerational solidarity. In this context, the book examines how the EU Court of Justice approaches the principles of equal treatment in the light of these broadly-based, social, economic, and politically driven employment objectives in the question of whether it is possible to justify age discrimination.

European age discrimination case law in the field of employment and occupation has developed rapidly due to numerous discrimination cases brought before the

EU Court of Justice after the implementation of Directive 2000/78. The EU Court of Justice has made a huge contribution to the interpretation and explanation of European equal treatment law. However, the approach by the EU Court of Justice has not always proved to be stringent or consistent in practice. For example, justifications for compulsory retirement from employment are more widely applied by the EU Court of Justice than other age discrimination provisions in employment and occupation. This does not contribute to the uniformity of European equal treatment law and raises critical questions for national judges.

The EU Court of Justice respects the wide discretion that Member States and social partners have in determining social policy on the basis of political, economic, social, demographic and/or budgetary considerations. Member States and social partners can choose whether to take measures to extend or shorten the working life of individuals while adapting employment targets over time to labour market conditions, without affecting the legitimate aim of the intended employment policy. Member States are generally quite capable of justifying employment policy aims even when they are not explicitly mentioned by statute or collective labour agreement, but from constitutional legislation or other preceding documents derived from the general context of the legal measure. The employment policy aims of the European Year for active ageing and solidarity between generations are not complementary to each other, nor do they pursue the same objective, but both play a crucial role in justifying age discrimination. Active ageing focuses on working longer and, in point of fact, aims at positive age discrimination. Intergenerational solidarity, on the other hand, has quite the opposite aim of shortening the working lives of older workers: thus giving the younger generation an opportunity in the labour market. The contradiction between these employment policy aims is at its most visible in economic changes in the labour market. In a growing economy with high employment and high labour demand, longer participation of older workers in the labour market is desirable. In that situation, there is no reason for compulsory retirement. However, in times of recession with high unemployment, there is a need for transition, with older people making way for young people in the labour market.

After the *Palacios de la Villa* case, individual social, economic factors such as a reasonable pension or other substitute income, combined with the possibility of being active elsewhere in the labour market, have played a decisive role in the European anti-discrimination case law concerning pension-related dismissal. Notably, general labour market conditions play a marginal role. In subsequent judgments dealing with flexible retirement, the EU Court of Justice has already weighed the prohibition of age discrimination on the one hand against the fundamental right to engage in work on the other, taking into account the employment of older workers in occupational and social economic life.

That being said, in Danish judgments, however, there is a favourable development in European case law regarding the promotion of active participation of workers in the labour market and the fundamental right to engage in work and to pursue a freely chosen or accepted occupation. The EU Court of Justice considered a legal measure depriving severance pay to workers entitled to an old-age pension to be discriminatory on the grounds of age if the worker would have preferred to remain active in the labour market. An important element in this consideration is whether or not the pension entitlement can be fully monetized into a pension payout. As soon as the employee is forced to use the accrued pension income earlier, there is an excessive violation of individual employee rights. The EU Court of Justice thus deviated from the solid line of case law since *Palacios de la Villa*, without clearly explaining why it changed its course.

The EU Court of Justice has ultimately left it to the national courts to assess the balance between the legal measure and the employment policy aim in the light of the situation in the relevant labour market. The lack of specific instruction from the EU Court of Justice means that, in the space given to them, national judges can choose which judgments of the EU Court of Justice or which elements of that judgment can be applied, despite the obligation to comply with the Directive. There is, therefore, still an important task for the EU Court of Justice in striving for a directive in accordance with the interpretation and uniformity of European equal treatment law in employment and occupation. In addition, there is a need for clarity on the application of Article 15 EU Charter of Fundamental Rights in the light of demographic developments.