



## NEWS REPORT

<b>Date:</b>	7 September 2010
<b>Expert:</b>	Mahlmann, Matthias
<b>Title:</b>	<i>Ultra-vires</i> control of ECJ in <i>Mangold</i>
<b>Country:</b>	Germany
<b>Context</b>	
<b>Issue at stake:</b>	Control of ECJ through Federal German Constitutional Court
<b>Ground of discrimination:</b>	age
<b>Source:</b>	Decision Federal German Constitutional Court (Bundesverfassungsgericht), 2 BvR 2661/06
<b>Field:</b>	Employment
<b>Legislative provisions:</b>	Art. 12 (freedom of profession), Art. 2 (freedom of action), Art. 101.1 (prohibition of removal from the jurisdiction of lawful judge) Basic Law

### Content

**Case:** The complainant sought redress against a decision of the Federal German Labour Court (Bundesarbeitsgericht) 7 AZR 500/04, 26 April 2006 applying the ruling developed by the ECJ in *Mangold*. The complainant employed employees under the rules of the Teilzeit- und Befristungsgesetz, Sec. 14.3, which were held to violate community law in *Mangold*. The complainant argued that the latter decision violated EU law because the Court went beyond its competences conferred by the treaties and that *Mangold* should be declared *ultra vires* hence invalid. Consequently, the complainant regarded application of *Mangold* as violation of his fundamental rights of freedom of profession (Article 12 Basic Law) and general freedom of action (Article 2.1 Basic Law). In addition, he claimed that the non-referral to the ECJ by the Federal Labour Court violated the prohibition of removing somebody from the jurisdiction of his lawful judge, enshrined in Article 101.1 Basic Law.

**Decision of the Court:** The Federal German Constitutional Court (Bundesverfassungsgericht), 2 BvR 2661/06, 6 July 2010, decided that there was no violation of the Basic Law. It left the question open whether or not the *Mangold* decision of the ECJ was *ultra vires* or not. Even assuming such a breach of union law, it was not of such a qualified degree, it argued, that the decision of the ECJ could be set aside. This would only be possible if the action by the ECJ was evidently *ultra vires* and had the consequences of structurally reshaping the competencies within the Union to the disadvantage of the Member states. It regarded Article 101.1 not as violated as there were no sufficient reasons for the Federal Labour Court to engage the ECJ through a preliminary reference again in the proceedings.



**Internet link source and additional information:** [www.bverfg.de](http://www.bverfg.de)