

SUMMARY

ECJ 13 November 2014, case C-416/13 (Mario Vital Pérez & Ayuntamiento de Oviedo), Age discrimination

Facts

The municipality of Oviedo published a “notice of competition” intended to fill local police officer posts. Point 3.2 of the notice, which was based on a provision of a provincial law, required applicants to be no more than 30 years of age. Mr Vital Pérez challenged this requirement on the grounds that it violated his constitutional right to equal access to public office and the prohibition of age discrimination. He pointed out that the notice of competition required applicants to be sufficiently physically and mentally fit to perform the duties of a police officer and to pass physical tests.

National proceedings

Mr Vital Pérez brought proceedings against the municipality before the *Juzgado de lo Contencioso – Administrativo No 4 de Oviedo*. The municipality argued that point 3.2 was justified under Article 6(1)(c) of Directive 2000/78 and according to the ECJ’s judgment in *Wolf* (C- 229/08).

The court referred a question to the ECJ, asking whether Articles 2(2), 4(1) and 6(1)(c) of Directive 2000/78 and Article 21(1) of the Charter preclude a public body from fixing a maximum age of 30 for access to the post of local police officer.

ECJ’s findings

1. The provincial law in question treats certain persons less favourably than other persons in comparable situations on the sole ground that they have exceeded the age of 30 years.

Therefore, it is directly age discriminatory (§ 32-33).

2. The possession of particular physical capacities may be regarded as a “genuine and determining occupational requirement” within the meaning of Article 4(1) of Directive 2000/78. The question is whether the requirement’s objective is legitimate and proportionate (§ 34-41).

3. The reason for the age limit is to safeguard the operational capacity and proper functioning of the local police service by ensuring that newly recruited officers are able to perform the more physically demanding tasks for a relatively long period of their career. This is legitimate (§ 42-44).

4. Insofar as it allows a derogation from the principle of non-discrimination, Article 4(1) of the directive must be interpreted strictly (see *Prigge*, C-447/09). In *Wolf*, the ECJ accepted an age limit of 30 for intermediate career posts in the fire service. However, it reached that conclusion only after having found, on the basis of scientific data, that some of the tasks in question, such as fighting fires, required “exceptionally high” physical capacities and that very few officials at 45 years of age have sufficient physical capacity to perform the fire-fighting part of their activities. Recruitment at an older age would have the consequence that too large a number of officials could not be assigned to the most physically demanding duties and would not allow the recruits to be assigned to those duties for a sufficiently long period. Those considerations do not hold true for the local police officers in this Spanish case. Moreover, the notice of competition requires applicants to perform physical tests. Also, there is the fact that in other Spanish provinces the age limit is higher (35, 36 or 40) or absent, as well as the fact that the age limit in the province in question has meanwhile been abolished. It follows from the foregoing that in fixing the age limit at issue, the provincial legislator imposed a disproportionate requirement and cannot rely on Article 4(1) of the directive (§ 45-58).

5. Article 6(1)(c) of the directive allows “the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement”, provided that the means used to achieve such an aim are appropriate and necessary. This is not the case here, given that applicants who have passed the competition must follow a period of “selective training” before entering the police service and given the retirement age of 65. Therefore, the difference of treatment at issue cannot be justified under Article 6(1)(c) of the directive (§ 59-73).

Ruling

Articles 2(2), 4(1) and 6(1)(c) of Council Directive 2000/78 [...] must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which sets the maximum age for recruitment of local police officers at 30 years.

Creator: European Court of Justice (ECJ)

Verdict at: 2014-11-13

Case number: C-416/13