

**Reference for a preliminary ruling from the Verwaltungsgericht Frankfurt am Main (Germany) lodged on 28 May 2008 — Colin Wolf v Stadt Frankfurt am Main**

(Case C-229/08)

(2008/C 223/33)

*Language of the case: German*

**Referring court**

Verwaltungsgericht Frankfurt am Main

**Parties to the main proceedings**

*Applicant:* Colin Wolf

*Defendant:* Stadt Frankfurt am Main

**Questions referred**

1. Does the national legislature enjoy a wide general margin of discretion to exploit the room for manoeuvre in Article 6(1) of Directive 2000/78/EC, <sup>(1)</sup> or is the discretion limited to what is needed, at any rate when it comes to setting an upper age limit for recruitment with a view to a minimum period of service before retirement in accordance with point (c) of the second subparagraph of Article 6(1) of Directive 2000/78/EC?
2. Does the criterion of need in point (c) of the second subparagraph of Article 6(1) of Directive 2000/78/EC express the appropriateness of the means mentioned in the first subparagraph of Article 6(1) of Directive 2000/78/EC in more concrete terms, thereby restricting the scope of that general provision?
3. (a) Does pursuing the interest in recruiting officials who will remain in active service for as long as possible by having a maximum recruitment age constitute a legitimate aim for a public employer to pursue in the context of the first subparagraph of Article 6(1) of Directive 2000/78/EC?
  - (b) Is the implementation of such an aim inappropriate as soon as it results in officials serving for longer than the 5 years necessary to obtain the minimum pension guaranteed by law in the case of early retirement?
  - (c) Is the implementation of such an aim inappropriate only once it results in officials serving for longer than the time necessary — at present 19.51 years — to earn in full the minimum pension guaranteed by law in the case of early retirement?
4. (a) Is it a legitimate aim within the meaning of the first subparagraph of Article 6(1) of Directive 2000/78/EC to keep the total number of officials to be recruited to a minimum by means of a maximum recruitment age which is as low as possible, in order to keep to a minimum the amount of individual benefits such as provision for accidents or sickness (assistance which also covers family members)?
  - (b) In that respect, what significance can be accorded to the fact that, as officials grow older, provisions for accidents or sickness benefits (including for family members) are higher than for younger officials, so that the recruitment of older officials could increase the overall cost of such provision?
  - (c) In that respect, must firm forecasts or statistics be available, or are general assumptions based on probability sufficient?
5. (a) If a public employer wants to apply a particular maximum recruitment age in order to ensure a 'balanced age structure in the particular career', is that aim legitimate within the meaning of the first subparagraph of Article 6(1) of Directive 2000/78/EC?
  - (b) If so, what requirements must the criteria for creating such an age structure satisfy in order to meet the conditions for a ground of justification (appropriateness and necessity, need)?
6. If in respect of a maximum recruitment age a public employer refers to the fact that, until that age is reached, there are regular opportunities to acquire the relevant qualifications for recruitment on a training programme for middle-ranking officers in the fire service, in the form of appropriate school education and technical training, does that constitute a legitimate consideration within the meaning of the first subparagraph of Article 6(1) of Directive 2000/78/EC?
7. What criteria should be used to assess whether a minimum period of service before retirement is appropriate or necessary?
  - (a) Is the need for a minimum period of service justified solely as a form of compensation for having acquired, exclusively at the employer's expense, a qualification with the employer (professional qualification for a middle-ranking post in the fire service), in the interests of ensuring, with regard to such a qualification, an adequate subsequent period of service with that employer, so that the costs of training the officer are thus gradually worked off?
  - (b) What is the maximum permissible length of the service period phase that follows the period of training? Can it exceed five years? If so, under what conditions?
  - (c) Irrespective of question 7(a), can the appropriateness or necessity of a minimum period of service be justified by the consideration that, in the case of officials whose pensions are financed solely by the employer, the estimated period of active service from recruitment to likely retirement date must suffice to earn in full the minimum pension guaranteed by law by serving for a period which is at present 19.51 years?

- (d) Conversely, is a refusal to recruit someone justified under Article 6(1) of Directive 2000/78/EC only if the person would be recruited at an age which, given his likely retirement date, would result in the minimum pension being payable although it had not yet been fully earned?
8. (a) Should the date of retirement for the purposes of point (c) of the second subparagraph of Article 6(1) of Directive 2000/78/EC be determined on the basis of the age limit fixed by law for retirement and subsequent receipt of a pension, or must it be based on statistical calculations of the average retirement age of a particular group of officials or employees?
- (b) Where applicable, to what extent should it be taken into consideration that in individual cases the normal date of an official's retirement can be postponed by up to two years? Does that circumstance lead to a corresponding increase in the maximum recruitment age?
9. Can the initial in-service training to be completed be included in the calculation of the minimum period of service under Article 6(1) of Directive 2000/78/EC? In that respect, is it relevant whether the training period has to be fully accounted for as pensionable service for the purpose of obtaining the pension, or should the period of training be excluded from the time period for which an employer may require a minimum length of service under point (c) of the second subparagraph of Article 6(1) of Directive 2000/78/EC?
10. Are the provisions in the second sentence of Paragraph 15(1) and in Paragraph 15(3) of the General Law on Equal Treatment compatible with Article 17 of Directive 2000/78/EC?

(<sup>1</sup>) OJ 2000 L 303, p. 16.

**Appeal brought on 29 May 2008 by Massimo Giannini against the judgment delivered on 12 March 2008 in Case T-100/04 Massimo Giannini v Commission**

(Case C-231/08 P)

(2008/C 223/34)

*Language of the case: French*

**Parties**

*Appellant:* Massimo Giannini (represented by: L. Levi and C. Ronzi, lawyers)

*Other party to the proceedings:* Commission of the European Communities

**Form of order sought**

- Annulment of the judgment of the Court of First Instance of the European Communities of 12 March 2008 in Case T-100/04;
- Grant of the appellant's claims in the forms of order sought at first instance and consequently,
  - annulment of the decision of the selection board in competition COM/A/9/01 not to include the appellant's name on the competition reserve list, a decision notified to the appellant by letter of 11 June 2003, and so far as necessary, annulment of the decision refusing the appellant's application for review, a decision notified to the appellant by letter of 8 July 2003, and annulment of the decision rejecting the appellant's complaint, a decision notified to the appellant by letter of 2 December 2003;
  - award of damages in respect of material damage assessed (i) on the difference between the unemployment benefit received on conclusion of a temporary staff contract and the salary of an official graded A7 step 4 and (ii) after the period of unemployment, on the amount of salary paid to an official graded A7 step 5, and in respect of non-material damage, assessed at EUR 1;
- order that the Commission pay all of the costs at first instance and on appeal.

**Pleas in law and main arguments**

The appellant relies in essence on three principal grounds in support of his appeal.

In his first ground of appeal, the appellant complains that the Court of First Instance infringed his right to a fair trial and, more particularly, the right to have his case determined within a reasonable time. Four years elapsed between the date of the case being brought before the Court of First Instance and the date of delivery of the contested judgment. According to the appellant, there was no exceptional circumstance which in this case justified such a length of time. The documents before the Court were neither particularly voluminous nor legally complex and the proceedings had real importance for the appellant.

In his second ground of appeal, the appellant claims that the Court of First Instance infringed Articles 4, 27 and 29 of the Staff Regulations and misinterpreted both the concept of the interests of the service and the duty of the Community institutions to have regard for the welfare of their servants and officials. According to the appellant, the Court of First Instance confused in that regard entry into the Community civil service, by means of an open competition intended to establish a recruitment reserve, and the career development of persons already employed by means of the mechanisms, provided for by the Staff Regulations, of transfers and promotions.