

3. Article 49 EC must be interpreted as meaning that:

- (a) a Member State seeking to ensure a particularly high level of consumer protection in the sector of games of chance may be entitled to consider that it is only by setting up a monopoly for a single entity subject to strict control by the public authorities that it can tackle crime linked to that sector and pursue the objective of preventing incitement to squander money on gambling and combating addiction to gambling with sufficient effectiveness;
- (b) to be consistent with the objective of fighting crime and reducing opportunities for gambling, national legislation establishing a monopoly of games of chance which allows the holder of the monopoly to follow an expansionist policy must:
- be based on a finding that the crime and fraud linked to gaming and addiction to gambling are a problem in the Member State concerned which could be remedied by expanding authorised regulated activities, and
  - allow only moderate advertising limited strictly to what is necessary for channelling consumers towards monitored gaming networks;
- (c) the fact that a Member State has opted for a system of protection that differs from that adopted by another Member State cannot affect the assessment of the need for and proportionality of the relevant provisions, which must be assessed solely by reference to the objectives pursued by the competent authorities of the Member State concerned and the level of protection which they seek to ensure.

<sup>(1)</sup> OJ C 282, 21.11.2009.

**Judgment of the Court (Grand Chamber) of 13 September 2011 (reference for a preliminary ruling from the Bundesarbeitsgericht (Germany)) — Reinhard Prigge, Michael Fromm, Volker Lambach v Deutsche Lufthansa AG**

(Case C-447/09) <sup>(1)</sup>

**(Directive 2000/78/EC — Articles 2(5), 4(1) and 6(1) — Prohibition of discrimination on grounds of age — Airline pilots — Collective agreement — Clause automatically terminating employment contracts at age 60)**

(2011/C 319/05)

Language of the case: German

**Referring court**

Bundesarbeitsgericht

**Parties to the main proceedings**

Applicants: Reinhard Prigge, Michael Fromm, Volker Lambach

Defendant: Deutsche Lufthansa AG

**Re:**

Reference for a preliminary ruling — Bundesarbeitsgericht — Interpretation of Articles 2(5), 4(1) and 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — Prohibition of discrimination on grounds of age — Whether those rules are compatible with a collective agreement which provides, on grounds of air safety, that a pilot's contract of employment terminates automatically at the end of the month in which that pilot reaches the age of 60

**Operative part of the judgment**

Article 2(5) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the Member States may authorise, through rules to that effect, the social partners to adopt measures within the meaning of Article 2(5) in the areas referred to in that provision that fall within collective agreements on condition that those rules of authorisation are sufficiently precise so as to ensure that those measures fulfil the requirements set out in Article 2(5). A measure such as that at issue in the main proceedings, which fixes the age limit from which pilots may no longer carry out their professional activities at 60 whereas national and international legislation fixes that age at 65, is not a measure that is necessary for public security and protection of health, within the meaning of the said Article 2(5).

Article 4(1) of Directive 2000/78 must be interpreted as precluding a clause in a collective agreement, such as that at issue in the main proceedings, that fixes at 60 the age limit from which pilots are considered as no longer possessing the physical capabilities to carry out their professional activity while national and international legislation fix that age at 65.

The first paragraph of Article 6(1) of Directive 2000/78 must be interpreted to the effect that air traffic safety does not constitute a legitimate aim within the meaning of that provision.

<sup>(1)</sup> OJ C 24, 30.1.2010.