

Reference for a preliminary ruling from the Raad Van State (Netherlands), lodged on 6 April 2010 — Johan van Leendert Holding BV v Minister van Sociale Zaken en Werkgelegenheid

(Case C-158/10)

(2010/C 161/33)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: Johan van Leendert Holding BV

Respondent: Minister van Sociale Zaken en Werkgelegenheid

Question referred

Must Articles 56 and 57 of the Treaty on the Functioning of the European Union be interpreted as precluding national rules, as set out in Article 2 of the Netherlands Law on the Employment of Foreign Nationals (Wet arbeid vreemdelingen), read in conjunction with Article 1e(1)(c) of the Decree implementing the Law on the Employment of Foreign Nationals (Besluit uitvoering Wet arbeid vreemdelingen), under which an employment permit is required for the posting of workers as referred to in Article 1(3)(b) of Directive 96/71/EC ⁽¹⁾?

⁽¹⁾ Directive of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1).

Reference for a preliminary ruling from the Verwaltungsgericht Frankfurt am Main (Germany) lodged on 2 April 2010 — Gerhard Fuchs v Land Hessen

(Case C-159/10)

(2010/C 161/34)

Language of the case: German

Referring court

Verwaltungsgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Gerhard Fuchs

Defendant: Land Hessen

Questions referred

1. Are the rules laid down in the Hessisches Beamtengesetz (Civil Service Law of the *Land* of Hessen) on what is in principle the compulsory retirement age for civil servants based on an aim in the public interest in accordance with standards of Union law?

The following main questions arise in this respect:

What specific requirements in Union law should such an aim prescribed in the public interest satisfy? What additional issues relating to the clarification of the facts of the case should the referring court consider?

Does an interest in saving budgetary resources and labour costs, in the present context by avoiding the recruitment of new staff and so reducing expenditure on personnel, represent a legitimate aim within the meaning of Article 6(1) of Directive 2000/78/EC? ⁽¹⁾

Can an employer's aim of enjoying a degree of planning certainty as regards the retirement of civil servants be recognised as a legitimate aim in the public interest, even if every employer governed by the Hessisches Beamtengesetz or the Beamtenstatusgesetz (Law on the Status of Civil Servants) may develop and implement staff management ideas of his own?

Can an interest in a 'favourable age stratification' or 'favourable age structure' be recognised as an aim in the public interest, despite the absence of general standards or statutory rules on what constitutes a correct age stratification or age structure?

Can an interest in creating opportunities for the promotion of civil servants already in place be regarded as a legitimate aim in the public interest within the meaning of Article 6(1) of Directive 2000/78/EC?

Does the adoption of rules on retirement ages to preclude individual legal disputes with older employees over their continued fitness for service constitute the pursuit of a legitimate aim in the public interest?

Does the reference to the public interest within the meaning of Article 6(1) of Directive 2000/78/EC presuppose a labour market policy concept extending beyond individual employers in the area of employment, and if so, how uniform and binding must it be?

Is it in fact possible for individual employers to pursue aims in the public interest for groups of employees, limited here to civil servants governed by the Hessisches Beamtengesetz, with retirement age rules of such limited scope?

Under what conditions can the aim, which can be pursued by individual employers, but is not mandatory, of occupying posts vacated by retired employees with new recruits, where necessary after existing employees have been promoted, be regarded as being in the public interest within the meaning of Article 6(1) of Directive 2000/78/EC? Must the reference to the public interest be backed not only by general claims that the rules serve that purpose, but also by statistics or other findings from which it can be inferred that such an aim is sufficiently serious and can actually be achieved?

2. What specific requirements should be satisfied by the reasonableness and suitability of a retirement age arrangement within the meaning of the rules laid down in the Hessisches Beamtengesetz?

Are more thorough investigations needed to determine the ratio of the — probable — number of civil servants remaining in service voluntarily after retirement age to the number who wish to receive a full pension on reaching retirement age, if not earlier, and therefore certainly want to leave the service? Would it not be appropriate in this respect to give voluntary retirement preference over compulsory retirement, provided that arrangements are made for pensions to be reduced where they are taken before the set retirement age is reached so as to preclude unreasonable pension budget spending and associated labour costs (voluntary departure rather than compulsion as the more appropriate and, in effect, hardly less suitable arrangement)?

Can it be deemed reasonable and necessary to assume it to be irrefutable that all civil servants cease to be fit for service on reaching a given higher age, such as 65 years in this case, and so automatically to terminate their employment as civil servants at that age?

Is it reasonable for the possibility to remain employed in the civil service at least until the age of 68 years to be entirely dependent on the employer having special interests, but for employment in the civil service to be terminated with no legal possibility of securing reappointment where no such interests exist?

Does a retirement age arrangement which leads to compulsory retirement, rather than being confined to specifying the conditions for entitlement to a full pension, as permitted under Article 6(2) of Directive 2000/78/EC, result in an unreasonable devaluation of the interests of older people relative to the fundamentally no more valuable interests of younger people?

If the aim of facilitating recruitment and/or promotion is deemed to be legitimate, what more precise requirements must actually be satisfied to demonstrate the extent to which such opportunities are actually seized by each employer taking advantage of the retirement age arrangement or by all employers, in and outside the general labour market, to whom the statutory arrangement applies?

In view of the gaps already to be seen in the labour market owing to demographic trends and of the impending need for skilled staff of all kinds, including staff for the public service of the Federal German and *Land* governments, is it reasonable and necessary to force civil servants able and willing to continue working to retire from the civil service at a time when there will soon be a major demand for personnel which the labour market will hardly be able to meet? Will it possibly be necessary in the future to collect sectoral labour market data?

3. What requirements need to be met as regards the coherence of Hessen's and possibly Federal German legislation on retirement ages?

Can the relationship between Paragraph 50(1) und Paragraph 50(3) of the Hessisches Beamtengesetz be regarded as consistent if the possibility in principle of remaining in employment beyond retirement age depends entirely on the employer's interests?

Should Paragraph 50(3) of the Hessisches Beamtengesetz possibly be interpreted to mean, in compliance with the Directive, that, to preclude unreasonable discrimination on the grounds of age, employment must always continue unless service factors prevent this? What requirements should then be satisfied to prove the existence of any such factors? Must it be assumed in this respect that the interests of the service require continued employment if only because unjustifiable discrimination on the grounds of age would otherwise occur?

How might advantage be taken of such an interpretation of Paragraph 50(3) of the Hessisches Beamtengesetz for a continuation or resumption of the applicant's employment as a civil servant, even though that employment has meanwhile been terminated? Should, in that case, Paragraph 50(1) of the Hessisches Beamtengesetz remain inapplicable at least until the age of 68 years?

Is it reasonable and necessary, on the one hand, to impede the taking of voluntary retirement at the age of 60 or 63 years, with a permanent reduction in pension, and, on the other hand, to rule out the voluntary continuation of employment after the age of 65 years unless the employer has, by way of exception, a special interest in its continuation?

Do the rules on retirement ages laid down in Paragraph 50(1) of the Hessisches Beamtenengesetz cease to be reasonable and necessary as a result of the more favourable rules on part-time work on the grounds of age on the one hand and fixed-term civil servants on the other?

What significance for coherence can be attributed to the various rules laid down in employment (public and private sector) and social insurance law which, first, are seeking permanently to raise the age at which a full pension can be drawn, second, prohibit the termination of employment on the grounds that the age specified for the standard retirement pension has been reached and, third, make it compulsory for employment to terminate when that precise age is reached?

Is it relevant to coherence that the gradual raising of retirement ages in the social insurance and civil service law relating to the Federal German authorities and some Länder primarily serves the interests of employees in delaying as long as possible the need to meet the more stringent requirements for a full retirement pension? Are these questions insignificant because retirement ages have not yet been raised for civil servants governed by the Hessisches Beamtenengesetz, although this is due to become effective in the near future in the case of employees in employment relationships?

⁽¹⁾ 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

**Reference for a preliminary ruling from the
Verwaltungsgericht Frankfurt am Main (Germany) lodged
on 2 April 2010 — Peter Köhler v Land Hessen**

(Case C-160/10)

(2010/C 161/35)

Language of the case: German

Referring court

Verwaltungsgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Peter Köhler

Defendant: Land Hessen

Questions referred

1. Are the rules laid down in the Hessisches Beamtenengesetz (Civil Service Law of the *Land* of Hessen) on what is in principle the compulsory retirement age for civil servants based on an aim in the public interest in accordance with standards of Union law?

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Can an employer's aim of enjoying a degree of planning certainty as regards the retirement of civil servants be recognised as a legitimate aim in the public interest, even if every employer governed by the Hessisches Beamtenengesetz or the Beamtenstatusgesetz (Law on the Status of Civil Servants) may develop and implement staff management ideas of his own?

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Can an interest in creating opportunities for the promotion of civil servants already in place be regarded as a legitimate aim in the public interest within the meaning of Article 6(1) of Directive 2000/78/EC?

Does the adoption of rules on retirement ages to preclude individual legal disputes with older employees over their continued fitness for service constitute the pursuit of a legitimate aim in the public interest?