



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

15 November 2016*

(Reference for a preliminary ruling — Equal treatment in employment and occupation — Directive 2000/78/EC — Article 2(2) and Article 4(1) — Discrimination on grounds of age — Recruitment of police officers of the Autonomous Community of the Basque Country restricted to candidates under 35 years of age — Concept of ‘genuine and determining occupational requirement’ — Objective pursued — Proportionality)

In Case C-258/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco (High Court of Justice of the Autonomous Community of the Basque Country, Spain), made by decision of 20 May 2015, received at the Court on 1 June 2015, in the proceedings

Gorka Salaberria Sorondo

v

Academia Vasca de Policía y Emergencias,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, L. Bay Larsen, J.L. da Cruz Vilaça (Rapporteur), E. Juhász, M. Berger and A. Prechal, Presidents of Chambers, A. Rosas, C. Toader and D. Šváby, E. Jarašiūnas, C.G. Fernlund and C. Vajda, Judges,

Advocate General: P. Mengozzi,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 30 May 2016,

after considering the observations submitted on behalf of:

- Mr Salaberria Sorondo, by I. Jiménez Echevarría, Procuradora, and by J.-C. Pérez Cuesta, F.J. González Madariaga and A. Martínez Gutierrez, abogados,
- the Academia Vasca de Policía y Emergencias, by J.L. Iparragirre Mujika and A. Saiz Garitaonandia, abogados,
- the Spanish Government, by M.J. García-Valdecasas Dorrego, V. Ester Casas and L. Banciella Rodríguez-Miñón, acting as Agents,

* Language of the case: Spanish.

— Ireland, by E. Creedon, L. Williams and T. Joyce, acting as Agents, and by D. Fennelly BL,
— the French Government, by D. Colas and R. Coesme, acting as Agents,
— the Italian Government, by G. Palmieri, acting as Agent, and by G.M. De Socio and de E. De Bonis, avvocati dello Stato,
— the European Commission, by N. Ruiz García and D. Martin, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 21 July 2016,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(2), Article 4(1), and Article 6(1)(c) 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).
- 2 The request has been made in proceedings between Mr Gorka Salaberria Sorondo and the Academia Vasca de Policía y Emergencias (Basque Police and Emergency Services Academy, Spain; ‘the Academy’) on the latter’s decision to issue a notice of competition containing the requirement that candidates for posts as police officers in the Autonomous Community of the Basque Country should be under 35 years old.

Legal context

European Union law

- 3 Recitals 18, 23 and 25 of Directive 2000/78 state:

‘(18) This Directive does not require, in particular, the armed forces and the police, prison or emergency services to recruit or maintain in employment persons who do not have the required capacity to carry out the range of functions that they may be called upon to perform with regard to the legitimate objective of preserving the operational capacity of those services.

...

(23) In very limited circumstances, a difference of treatment may be justified where a characteristic related to ... age ... constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate.

...

(25) The prohibition of age discrimination is an essential part of meeting the aims set out in the Employment Guidelines and encouraging diversity in the workforce. However, differences in treatment in connection with age may be justified under certain circumstances and therefore require specific provisions which may vary in accordance with the situation in Member States. It is therefore essential to distinguish between differences in treatment which are justified, in particular by legitimate employment policy, labour market and vocational training objectives, and discrimination which must be prohibited.’

4 Article 1 of Directive 2000/78 states that the purpose of that directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

5 Article 2 of that directive provides:

‘1. For the purposes of this Directive, the “principle of equal treatment” shall mean that there shall be no direct or indirect discrimination on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

...’

6 Article 3 of that directive provides:

‘1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

(a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

...’

7 Article 4(1) of Directive 2000/78, that article being headed ‘Occupational requirements’, provides:

‘Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.’

8 Article 6 of Directive 2000/78, headed ‘Justification of differences of treatment on grounds of age’, provides:

‘1. Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

...

(c) 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.

...'

Spanish law

9 Ley Orgánica 2/1986 de Fuerzas y Cuerpos de Seguridad (Organic Law No 2/1986 on State security forces and services) of 13 March 1986 (BOE No 63 of 14 March 1986), sets out the duties of the State security forces and services, the police forces of the Autonomous Communities and the local police forces.

10 As regards the police forces of the Autonomous Communities, Article 38(1) to (3) of that legislation sets out the following duties:

'1. Within the scope of their powers:

- (a) ensuring compliance with general regulations and individual orders issued by bodies of the Autonomous Community;
- (b) guarding and protecting persons, institutions, buildings, offices and premises of the Autonomous Community and its administrative authorities, ensuring the normal operation of facilities and the safety of users of their services;
- (c) the inspection of activities subject to the legislation of the Autonomous Community, reporting any unlawful activity;
- (d) the use of force for the enforcement of measures or provisions adopted by the Autonomous Community.

2. In cooperation with the State security forces and services:

- (a) ensuring compliance with State laws and regulations and the operation of essential public services;
- (b) participating in the tasks of the criminal investigation services as specified in Article 29(2) of this Law;
- (c) guarding public spaces, protecting demonstrations and maintaining order at large gatherings of people.

The performance of this duty shall primarily be the responsibility of the police forces of the Autonomous Communities, without prejudice to action by the State security forces and services where, either at the request of the authorities of the Autonomous Community or on their own initiative, the competent State authorities deem it to be necessary.

3. As part of action with the State security forces and services conducted in parallel and without distinction:

- (a) assisting in the settlement of private disputes when requested;
- (b) providing assistance in the event of accidents, disasters or public emergencies, by participating in the implementation of civil protection plans as provided for by statute;
- (c) ensuring compliance with provisions concerned with the conservation of nature and the environment, water resources, as well as game, fish or forestry stocks or other natural resources.'

- 11 Article 53 of Organic Law No 2/1986, which determines the duties of local police forces, provides:
- ‘1. Local police forces shall have the following duties:
- (a) protecting the local authorities and guarding their buildings and premises;
 - (b) ensuring the direction and control of traffic in the city centre, and signalling, in accordance with road traffic regulations;
 - (c) drawing up reports on traffic accidents in the city centre;
 - (d) performing administrative police duties regarding orders, notices and other acts adopted by the municipalities within their powers;
 - (e) participating in the functions of the criminal investigation services ...;
 - (f) providing assistance in the event of accidents, disasters or public emergencies, by participating in the implementation of civil protection plans as provided for by statute;
 - (g) implementing prevention programmes and making every effort to prevent the commission of criminal acts ...;
 - (h) guarding public areas and cooperating with the State security forces and services and with the police of the autonomous communities to protect demonstrations and maintain order at large gatherings when their assistance is requested;
 - (i) assisting in the settlement of private disputes when requested to do so.’
- 12 As regards admission into the national police force, Article 7(b) of Real Decreto 614/1995 por el que se aprueba el Reglamento de los Procesos selectivos y de formación del Cuerpo Nacional de Policía (Royal Decree 614/1995 approving the regulation on procedures for selection and training in the national police force) of 21 April 1995 (BOE No 118 of 18 May 1995), provides that candidates must be between 18 and 35 years old.
- 13 Article 26(1) of Ley 4/1992 de Policía del País Vasco (Law 4/1992 on the police in the Basque Country) of 17 July 1992 (*Boletín Oficial del País Vasco* No 155, of 11 August 1992), provides:
- ‘Within the powers exercised by the Autonomous Community of the Basque Country, the essential mission of the Ertzaintza [the autonomous Basque police] is to protect people and property, to ensure that individuals can freely exercise their rights and freedoms and to ensure the safety of citizens throughout the territory of the Autonomous Community. To that end, the Ertzaintza will perform the duties conferred by [Spanish law] on the State security forces.’
- 14 The eighth additional provision of Law 4/1992 confers on the Basque Government the power to determine, ‘by means of regulation, the range of medical exclusions applying to recruitment to the ranks and categories of officers comprising the Basque Country police force, and also the age and height requirements’.

- 15 Article 4(b) of Decreto 315/1994 por el que se aprueba el reglamento de selección y formación de la policía del País Vasco (Decree 315/1994 approving the regulation on determining arrangements for the selection and training of the police of the Basque Country) of 19 July 1994 (*Boletín Oficial del País Vasco* No 157, of 19 August 1994), as amended by Decreto 120/2010 (Decree 120/2010) of 20 April 2010 ('Decree 315/1994'), lays down the following age requirement:

'A candidate for recruitment as a police officer must be aged 18 or over and under 35. However, with respect to recruitment to local police forces, the upper age limit may be revised taking into account services provided within the local administration, in the local police forces.'

The main proceedings and question referred for a preliminary ruling

- 16 Mr Salaberria Sorondo brought an action before the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco (High Court of Justice of the Autonomous Community of the Basque Country) against the decision of 1 April 2014 of the Directora General de la Academia Vasca de Policía y Emergencias (Director-General of the Basque Police and Emergency Services Academy, Spain) determining the specific conditions laid down in a notice of competition for the recruitment of police officers in the Autonomous Community of the Basque Country (*Boletín Oficial del País Vasco* No 82, of 1 April 2014).
- 17 Mr Salaberria Solondo disputes the legality of section 2, point 1(c), of that notice of competition, which imposes as a condition of participation in that competition the requirement that candidates should be under 35 years old. Mr Salaberria Solondo, who is more than 35 years old, argues that that requirement is contrary to Directive 2000/78 and to Articles 20 and 21 of the Charter of Fundamental Rights of the European Union. He claims, inter alia, that there is no justification for the age limit imposed, in that it restricts access to public service posts without reasonable grounds for doing so.
- 18 The referring court states that it has previously given a ruling that the upper age limit of 32 years for the recruitment of police officers in the Autonomous Community of the Basque Country complied with the requirements of proportionality deriving both from the Constitution and national legislation and also from Directive 2000/78. The referring court states that it took into consideration the fact that, in the judgment of 12 January 2010, *Wolf* (C-229/08, EU:C:2010:3), the Court held that Article 4(1) of that directive did not preclude national legislation that set the maximum age for recruitment to intermediate career posts in the fire service at 30 years.
- 19 The referring court also mentions the judgment of 13 November 2014, *Vital Pérez* (C-416/13, EU:C:2014:2371), where the Court held that Article 2(2), Article 4(1) and Article 6(1)(c) of Directive 2000/78 precluded national legislation that set the maximum age for recruitment of local police officers at 30 years.
- 20 In that regard, the referring court states, however, that the duties reserved by Spanish law to local police officers are not the same as those which are assigned to members of the State security forces and services. The latter duties correspond to those that are allocated to an 'integrated' police force, which has the duty of ensuring the preservation of public order and the safety of citizens in all respects. Since the duties of the police officers of the Autonomous Community of the Basque Country do not correspond to those allocated to the local police forces, but extend to those of the State security forces, the judgment of 13 November 2014, *Vital Pérez* (C-416/13, EU:C:2014:2371), is not relevant to the resolution of the dispute in the main proceedings.
- 21 The referring court considers that, taking into consideration the high level of the requirements inherent in the tasks allocated to the State security forces and services, the setting of 35 years as an upper age limit for admission to a police force that carries out all the duties required for the

maintenance of public order and public safety could be considered to be proportionate and reasonable, and, consequently, be held to be compatible with Article 2(2), Article 4(1) and Article 6(1)(c) of Directive 2000/78.

22 In those circumstances the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco (High Court of Justice of the Autonomous Community of the Basque Country) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is the setting of a maximum age of 35 years as a condition for participation in the selection process for recruitment to the post of officer of the police force of the Autonomous Community of the Basque Country compatible with the interpretation of Article 2(2), Article 4(1) and Article 6(1)(c) of Council Directive 2000/78 ...?’

The question referred for a preliminary ruling

23 By its question, the referring court seeks, in essence, to ascertain whether Article 2(2) of Directive 2000/78, read together with Article 4(1) and Article 6(1)(c) of that directive, must be interpreted as precluding legislation, such as that at issue in the main proceedings, which provides that candidates applying for posts as police officers must be under 35 years of age.

24 It must, first, be determined whether the legislation at issue in the main proceedings falls within the scope of Directive 2000/78.

25 In that regard, by providing that persons who are aged 35 or more may not be recruited to the police forces of the Autonomous Community of the Basque Country, Article 4(b) of Decree 315/1994 affects those workers’ recruitment conditions. Such legislation must therefore be regarded as laying down rules relating to access to employment in the public sector within the meaning of Article 3(1)(a) of Directive 2000/78 (see, to that effect, judgment of 13 November 2014, *Vital Pérez*, C-416/13, EU:C:2014:2371, paragraph 30)

26 It follows that a situation such as the one which gave rise to the dispute before the referring court falls within the scope of Directive 2000/78

27 Further, it must be recalled that, as stated in Article 1 of Directive 2000/78, the purpose of that directive is to lay down a general framework for combating discrimination on the grounds of, inter alia, age, as regards employment and occupation, with a view to putting into effect, in the Member States, the principle of equal treatment.

28 Article 2(1) of Directive 2000/78 states that ‘the “principle of equal treatment” shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1’ of that directive. Article 2(2)(a) of that directive states that, for the purposes of Article 2(1) thereof, direct discrimination is to be taken to occur when a person is treated less favourably than another in a comparable situation, on any of the grounds referred to in Article 1 of that directive.

29 In this case, the effect of the requirement laid down in Article 4(b) of Decree 315/1994 is that some individuals are treated less favourably than other individuals in comparable situations, on the sole ground that they are 35 years of age or more.

30 That legislation therefore introduces a difference of treatment based directly on age, as referred to in Articles 1 and 2(2)(a) of Directive 2000/78, read together (see, to that effect, judgment of 13 November 2014, *Vital Pérez*, C-416/13, EU:C:2014:2371, paragraph 33)

- 31 That being the case, the Court must, finally, examine whether, nonetheless, such a difference of treatment does not constitute discrimination, under Article 4(1) or Article 6(1) of Directive 2000/78.
- 32 In particular, Article 4(1) of Directive 2000/78 provides that ‘a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 [of that directive] shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate’.
- 33 It is clear from that provision that it is not the ground on which the difference of treatment is based but a characteristic related to that ground which must constitute a genuine and determining occupational requirement (judgment of 13 November 2014, *Vital Pérez*, C-416/13, EU:C:2014:2371, paragraph 36 and case-law cited).
- 34 The possession of particular physical capacities is one characteristic relating to age and the duties relating to protection of people and property, the arrest and guarding of offenders and preventive patrolling may require the use of physical force (judgments of 12 January 2010, *Wolf*, C-229/08, EU:C:2010:3, paragraph 41; 13 September 2011, *Prigge and Others*, C-447/09, EU:C:2011:573, paragraph 67, and of 13 November 2014, *Vital Pérez*, C-416/13, EU:C:2014:2371, paragraphs 37 and 39 and the case-law cited).
- 35 The nature of those duties requires a particular level of physical capability in so far as physical inadequacies in the exercise of those duties may have significant consequences not only for the police officers themselves and third parties but also for the maintenance of public order (judgment of 13 November 2014, *Vital Pérez*, C-416/13, EU:C:2014:2371, paragraph 40).
- 36 It follows that the possession of particular physical capacities in order to be able to perform the three essential duties of the police of the Autonomous Community of the Basque Country described in Article 26(1) of Law 4/1992, namely ensuring the protection of people and property, ensuring that each individual can freely exercise his or her rights and freedoms, and ensuring the safety of citizens, may be considered to be a genuine and determining occupational requirement, within the meaning of Article 4(1) of Directive 2000/78, for the pursuit of the profession at issue in the main proceedings.
- 37 As regards the objective pursued by Decree 315/1994, the Academy and the Spanish Government maintain that, by setting an upper age limit of 35 years for admission to the police forces of the Autonomous Community of the Basque Country, the aim of that decree is to preserve the operational capacity of that police service and that to ensure that it functions properly, by ensuring that newly recruited officials are capable of carrying out the most physically demanding tasks over a relatively long period of their careers.
- 38 In that regard, in paragraphs 43 and 44 of the judgment of 13 November 2014, *Vital Pérez* (C-416/13, EU:C:2014:2371), after observing that recital 18 of Directive 2000/78 states that the directive does not require police services to recruit or maintain in employment persons who do not have the required capacity to carry out the range of functions that they may be called upon to perform with regard to the legitimate objective of preserving the operational capacity of those services, the Court held that the concern to ensure the operational capacity and proper functioning of police services constitutes a legitimate objective within the meaning of Article 4(1) of that directive.
- 39 It is admittedly true that the Court held, in paragraph 57 of *Vital Pérez*, that national legislation that set an upper age limit of 30 years on the recruitment of local police officers in the Ayuntamiento de Oviedo (municipality of Oviedo, Spain) imposed a disproportionate requirement, contrary to Article 4(1) of Directive 2000/78.

- 40 However, the duties performed by the police forces of Autonomous Communities differ from those carried out by the local police, the latter being at issue in the case that gave rise to the judgment of 13 November 2014, *Vital Pérez* (C-416/13, EU:C:2014:2371). Accordingly, it must be recalled that local police officers are responsible, in particular, under Article 53 of Organic Law 2/1986, for ensuring protection of the authorities of local municipalities and guarding of their buildings, controlling and directing traffic in city centres, erecting road signs, and performing administrative police tasks. However, it is clear from Article 26(1) of Law 4/1992 that the police of the Autonomous Community of the Basque Country ‘has [as its] essential mission ... to protect people and property, to ensure that individuals can freely exercise their rights and freedoms and to ensure the safety of citizens throughout the territory of the Autonomous Community’.
- 41 As the Academy stated at the hearing before the Court, a police officer of the lowest rank in the Autonomous Community of the Basque Country, the rank for which the competition at issue in the main proceedings was organised, does not carry out administrative duties, but performs essentially operational duties, which, as also observed by the Advocate General in point 35 of his Opinion, may imply recourse to physical force and the performance of tasks in conditions where taking action is difficult, if not extremely difficult. For the performance of purely administrative duties, members of staff are, based on the information provided by the Academy, recruited by means of specific competitions, which do not lay down any age limit.
- 42 The Academy maintained before the Court that, as is apparent from the reports annexed to its written observations, from the age of 40 onwards, the operational performance of police officers of the Autonomous Community of the Basque Country declines, as reflected by reduced recovery capacity after sustained effort and an inability to perform any other similarly demanding task until a period of time has passed. Further, according to the same reports, a police officer who is more than 55 years old can no longer be considered to be in full possession of the capabilities necessary for the proper performance of his duties, without any risk to himself and to third parties.
- 43 Further, the Academy explained that police officers of the Autonomous Community of the Basque Country qualify for a statutory reduction in annual time worked, as from the age of 56 years, and are not required to work at night or to undertake patrols outside police stations (‘modified active service’), and a police officer who qualifies for such arrangements undertakes, on a voluntary basis, to retire at the age of 60 or, in some cases, at the age of 59.
- 44 It must, last, be stated that, according to the data submitted by the Academy, in 2009, that is, just before the introduction, in Decree 315/1994, of the age limit at issue in the main proceedings, the police forces of the Autonomous Community of the Basque Country consisted of 8 000 police officers. At that time, 59 of those police officers were between 60 and 65 years old and 1 399 were between 50 and 59 years old. The Academy added that, according to forecasts made in 2009, in 2018, 1 135 police officers will be between 60 and 65 years old, and 4 660 police officers, in other words more than half of the staff, will be between 50 and 59 years old. In 2025 more than 50% of police officers will be between 55 and 65 years old. On the basis of that data it can accordingly be anticipated that the average age of staff of that police force will rise significantly.
- 45 In the light of such data, the Academy emphasised the necessity of planning, by means of competitions, a gradual replacement of older agents through the recruitment of younger staff, better equipped to take on physically demanding tasks. In this respect, this case can again be distinguished from the case that gave rise to the judgment of 13 November 2014, *Vital Pérez* (C-416/13, EU:C:2014:2371), where, as is stated in paragraph 56 of that judgment, it had not been established that the objective of safeguarding the operational capacity and proper functioning of the local police service made it necessary to maintain within it a particular age structure, which would have required the recruitment exclusively of public servants under 30 years of age.

- 46 It follows from all the foregoing that the duties incumbent on the lowest rank of police officers of the Autonomous Community of the Basque Country include tasks that are physically demanding. The Academy has also argued that the age at which a police officer of the Autonomous Community of the Basque Country is recruited determines the length of time over which he is capable of performing such tasks. A police officer recruited at the age of 34, when he will, it should be added, have to undergo training over a period of around two years, will be suitable for assignment to those tasks for a maximum period of 19 years, that is, until he reaches the age of 55. That being the case, recruitment at a higher age would jeopardise the possibility of assigning a sufficient number of agents to the most physically demanding tasks. Likewise, such recruitment would mean that officers thus recruited could not be assigned for a sufficiently long period to those tasks. Last, as explained by the Academy, the rational organisation of the police service of the Autonomous Community of the Basque Country requires that a balance is struck between the number of physically demanding posts, not suitable for older police officers, and the number of posts that are less physically demanding, which can be occupied by older police officers (see, by analogy, judgment of 12 January 2010, *Wolf*, C-229/08, EU:C:2010:3, paragraph 43).
- 47 Moreover, as the Advocate General stated in point 38 of his Opinion, the inadequacies to be feared in the operation of the police service of the Autonomous Community of the Basque Country are such that it is not conceivable that, as part of a recruitment competition, the organisation of demanding, eliminatory physical tests might constitute a less restrictive alternative. Since the objective is to maintain the operational capacity and proper functioning of the police service of the Autonomous Community of the Basque Country, that objective requires that, with a view to re-establishing a satisfactory age pyramid, the possession of particular physical capacities should be envisaged not statically, at the time of recruitment competition tests, but dynamically, taking into consideration the years of service that can be accomplished by a police officer after he or she has been recruited.
- 48 It follows that legislation such as that at issue in the main proceedings, which provides that candidates for posts of police officers of the Autonomous Community of the Basque Country must be under 35 years of age, may, subject to the qualification that the referring court should satisfy itself that the assorted information to be obtained from the observations and documents submitted to the Court by the Academy and described above is accurate, be regarded, first, as being appropriate to the objective of ensuring the operational capacity and proper functioning of the police service concerned and, second, as not going beyond what is necessary for the attainment of that objective.
- 49 Since the difference of treatment based on age stemming from that legislation does not constitute discrimination under Article 4(1) of Directive 2000/78, there is no need to examine whether it might be justified in the light of Article 6(1)(c) of that directive.
- 50 It follows from all the foregoing that the answer to the question referred is that Article 2(2) of Directive 2000/78, read together with Article 4(1) of that directive, must be interpreted as not precluding legislation, such as that at issue in the main proceedings, which provides that candidates for posts as police officers who are to perform all the operational duties incumbent on police officers must be under 35 years of age.

Costs

- 51 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 2(2) of Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation, read together with Article 4(1) of that directive, must be interpreted as not precluding legislation, such as that at issue in the main proceedings, which provides that candidates for posts as police officers who are to perform all the operational duties incumbent on police officers must be under 35 years of age.

[Signatures]