



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

3 June 2021 *

(Reference for a preliminary ruling – Social policy – Principle of equal treatment in employment and occupation – Directive 2000/78/EC – Article 6(1) – Charter of Fundamental Rights of the European Union – Article 21 – Prohibition of all discrimination on the basis of age – National legislation setting 50 years of age as the age limit for access to the profession of notary – Justification)

In Case C-914/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decision of 19 September 2019, received at the Court on 12 December 2019, in the proceedings

Ministero della Giustizia

v

GN,

intervening parties:

HM,

JL,

JJ,

THE COURT (Second Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, A. Kumin, T. von Danwitz, P.G. Xuereb and I. Ziemele, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Italian.

after considering the observations submitted on behalf of:

- GN, by A. Police, G. Schettino and F. Ferraro, avvocati,
- the Italian Government, by G. Palmieri, acting as Agent, and by F. Varrone and G. Santini, avvocati dello Stato,
- the German Government, by M. Hellmann and J. Möller, acting as Agents,
- the European Commission, by D. Martin and B.-R. Killmann, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 10 TFEU, Article 21 of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 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).
- 2 The request has been made in proceedings between the Ministero della Giustizia (Ministry of Justice, Italy) and GN concerning the setting, by decree of the Director-General of that Ministry of 21 April 2016 launching a competition based on tests for 500 notarial positions, of an age limit for participation, which was fixed at 50 years of age.

Legal context

European Union law

- 3 Recital 6 of Directive 2000/78 is worded as follows:

‘The Community Charter of the Fundamental Social Rights of Workers recognises the importance of combating every form of discrimination, including the need to take appropriate action for the social and economic integration of elderly and disabled people.’
- 4 According to Article 1 thereof, 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(1) and (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 whatsoever 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(1)(a) of Directive 2000/78 states:

'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 6 of that directive, entitled 'Justification of differences of treatment on grounds of age', provides, in paragraph 1 thereof:

'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:

(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;

(b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;

(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.'

Italian law

- 8 Article 1 of legge n. 1365, Norme per il conferimento dei posti notarili (Law No 1365 on the rules for conferring notarial positions) of 6 August 1926 (GURI No 192 of 19 August 1926), in the version applicable to the facts in the main proceedings ('Law No 1365/1926'), is worded as follows:

'Notaries shall be appointed by decree by the President of the [Italian] Republic following a competition based on tests, to be held in Rome at least once a year, for the number of positions to be determined by the Minister for Justice.

...

In order to be admitted to the competition, candidates must:

...

(b) not have reached 50 years of age on the date of the competition notice;

...'

- 9 Article 7 of Law No 1365/1926 provides:

'Upon reaching 75 years of age, practising notaries shall be relieved of their duties by decree by the President of the [Italian] Republic.'

The dispute in the main proceedings and the question referred for a preliminary ruling

- 10 By decree of 21 April 2016, the Ministry of Justice launched a competition based on tests in order to fill 500 notarial positions. That decree set 50 years of age as the age limit for participation in that competition, in accordance with Article 1 of Law No 1365/1926.
- 11 GN challenged that decree, by which she was excluded from the written tests on the ground that she had reached 50 years of age before the date of the competition notice, before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy).
- 12 That court adopted an interim measure allowing GN to take part in the competition. She passed all the tests in that competition.
- 13 By judgment of 28 November 2019, that court declared GN's action inadmissible on the ground that, having passed the tests in the competition at issue, she had lost any interest in bringing proceedings.
- 14 The Ministry of Justice appealed against that judgment before the Consiglio di Stato (Council of State, Italy), taking the view that the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio) should have dismissed the action brought by GN on its merits and that it should not have taken account of the fact that GN had passed the tests in the competition at issue.
- 15 The referring court takes the view that the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio) should have declared the action brought by GN against the decree of 21 April 2016 admissible in so far as it sets 50 years of age as the age limit for

participation in the competition for access to the profession of notary. In addition, it is of the opinion that that age limit is consistent with the national legislation currently in force, namely Article 1 of Law No 1365/1926. However, the Consiglio di Stato (Council of State) has doubts as to the compatibility of that provision with Directive 2000/78, so that it is appropriate to put a question to the Court of Justice with a view to resolving the dispute brought before it.

- 16 According to the referring court, the question arises in particular as to whether that provision may be deemed justified in the light of the aims relied upon by the Ministry of Justice before it, which seek to ensure that the profession of notary is practised in a stable manner for a significant period without disturbing the budgetary balance of the social welfare system for that profession, by preventing those nearing retirement age from accessing that profession.
- 17 In those circumstances the Consiglio di Stato (Council of State) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Do Article 21 of [the Charter], Article 10 TFEU and Article 6 of [Directive 2000/78], in so far as they prohibit discrimination on the basis of age for access to employment, preclude a Member State from imposing an age limit on access to the profession of notary?’

Consideration of the question referred

- 18 By its question, the referring court asks, in essence, whether Article 21 of the Charter and Article 6(1) of Directive 2000/78 must be interpreted as precluding national legislation which sets 50 years of age as the age limit for participation in a competition for access to the profession of notary.
- 19 At the outset, it must be borne in mind that the prohibition of discrimination based on, inter alia, age is incorporated in Article 21 of the Charter and that that prohibition was given specific expression by Directive 2000/78 in the field of employment and occupation (judgment of 7 February 2019, *Escribano Vindel*, C-49/18, EU:C:2019:106, paragraph 39 and the case-law cited).
- 20 In those circumstances, in order to answer the question referred, it is necessary, first, to examine whether the legislation at issue in the main proceedings falls within the scope of Directive 2000/78 and contains a difference of treatment on grounds of age. If so, it must be determined, secondly, whether that difference of treatment may be justified under Article 6(1) of that directive.
- 21 As regards, in the first place, the question whether the legislation at issue in the main proceedings falls within the scope of Directive 2000/78, it is apparent both from its title and preamble and from its content and purpose that that directive seeks to lay down a general framework in order to guarantee equal treatment ‘in employment and occupation’ to all persons, by offering them effective protection against discrimination on one of the grounds covered by Article 1, which include age (judgment of 13 November 2014, *Vital Pérez*, C-416/13, EU:C:2014:2371, paragraph 28 and the case-law cited).
- 22 In addition, it follows, in particular, from Article 3(1)(a) of that directive that it applies, within the limits of the areas of competence conferred on the European Union, to all persons, as regards both the public and private sectors, including public bodies, in relation to, inter alia, 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.

- 23 By providing that only candidates who are under 50 years of age on the date of the competition notice may participate in the competition for access to the profession of notary, Article 1 of Law No 1365/1926 affects recruitment conditions in that sphere of employment. Therefore, the legislation at issue in the main proceedings must be regarded as laying down rules relating to recruitment conditions for the purposes of Article 3(1)(a) of Directive 2000/78.
- 24 In those circumstances, the legislation at issue in the main proceedings falls within the scope of Directive 2000/78.
- 25 As regards, in the second place, the question whether the legislation at issue in the main proceedings establishes a difference of treatment on grounds of age for the purposes of Article 2(1) of Directive 2000/78, it must be borne in mind that, under that provision, the ‘principle of equal treatment’ is to mean that there must be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1 thereof. Article 2(2)(a) of that directive states that, for the purpose of applying Article 2(1) thereof, direct discrimination is to be taken to occur where one person is treated less favourably than another person in a comparable situation, on any of the grounds referred to in Article 1 of that directive (judgment of 12 January 2010, *Wolf*, C-229/08, EU:C:2010:3, paragraph 28 and the case-law cited).
- 26 In the present case, the result of applying Article 1 of Law No 1365/1926 is that certain persons are treated less favourably than others in comparable situations on the ground that they have reached 50 years of age. Such a provision therefore involves a difference of treatment on grounds of age for the purposes of Article 1 of Directive 2000/78, read in conjunction with Article 2(2)(a) thereof.
- 27 It follows that it is necessary, in the third place, to examine whether or not that difference of treatment is justified under Article 6(1) of that directive.
- 28 It must be noted that the first subparagraph of that provision specifies that a difference of treatment on grounds of age does not constitute discrimination if, within the context of national law, it is 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.
- 29 Points (a) and (c) of the second subparagraph of Article 6(1) of Directive 2000/78 also state that such differences of treatment may include, among others, the setting of special conditions on access to employment for young people, in order to promote their vocational integration, or 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.
- 30 Furthermore, it must be borne in mind that Member States enjoy a broad discretion, not only in choosing to pursue a particular aim in the field of social and employment policy, but also in defining the measures capable of achieving it. However, that discretion cannot have the effect of frustrating the implementation of the principle of non-discrimination on grounds of age (judgment of 12 October 2010, *Ingeniørforeningen i Danmark*, C-499/08, EU:C:2010:600, paragraph 33 and the case-law cited).

- 31 In the present case, it is apparent from the request for a preliminary ruling that Law No 1365/1926 does not specify the aim pursued by Article 1 thereof, which sets 50 years of age as the age limit for participation in the competition for access to the profession of notary. The Italian Government argues, in its written observations, that the national legislation at issue in the main proceedings pursues three aims, namely: (i) ensuring that the profession of notary is practised in a stable manner for a significant period before retirement, so as to preserve the viability of the social welfare system; (ii) safeguarding the proper functioning of notarial privileges, which entail a high degree of professionalism; and (iii) facilitating the natural turnover and rejuvenation of that profession.
- 32 In that regard, it should be noted at the outset that it cannot be inferred from Article 6(1) of Directive 2000/78 that the lack of precision in the legislation at issue as regards the aim pursued automatically excludes the possibility that it may be justified under that provision. In the absence of such precision, it is important that other elements, taken from the general context of the measure concerned, enable the underlying aim of that measure to be identified for the purposes of review by the courts of whether it is legitimate and whether the means put in place to achieve it are appropriate and necessary (judgment of 21 July 2011, *Fuchs and Köhler*, C-159/10 and C-160/10, EU:C:2011:508, paragraph 39). Moreover, reliance on several aims at the same time, which are either linked to one another or classed in order of importance, does not preclude the existence of a legitimate aim within the meaning of Article 6(1) of Directive 2000/78 (judgment of 2 April 2020, *Comune di Gesturi*, C-670/18, EU:C:2020:272, paragraph 33 and the case-law cited).
- 33 As regards, first, the aim of ensuring that the profession of notary is practised in a stable manner for a significant period before retirement, so as to preserve the viability of the social welfare system, it should be noted that Article 6(1)(c) [of that directive] allows a maximum age to be fixed for recruitment which is based on the need for a reasonable period of employment before retirement. As regards safeguarding the social welfare system for notaries, it is apparent from the documents submitted to the Court that, under Article 10 of the Regulation on social welfare and solidarity activities of the Cassa Nazionale del Notariato (National Fund for Notaries, Italy), which manages that system, the right of notaries who leave office upon reaching the authorised age limit for practising that profession – namely 75 years of age under Article 7 of Law No 1365/1926 – to be paid a pension is contingent on them having practised that profession for 20 years. As the European Commission pointed out in its written observations, the right to a pension enjoyed by notaries under that regulation does not appear to be related to the age limit of 50 years of age set by Article 1 of that law for admission to the competition for access to the profession, but appears to be linked to a minimum period of practice of that profession. Thus, there appears to be no connection between the conditions laid down by that Fund to safeguard the viability of the social welfare system for notaries and that age limit, which is a matter for the referring court to determine.
- 34 As regards, secondly, the need to safeguard the proper functioning of notarial privileges, which entail a high degree of professionalism, it must indeed be pointed out that Article 6(1)(c) of Directive 2000/78 allows the fixing of a maximum age for recruitment which is based on the training requirements of the post in question.
- 35 However, in that regard, the Commission noted that, in accordance with national legislation, a candidate in a competition for notarial posts must hold a law degree and show that he or she has 18 months of experience as a notary, which serves as an ordinary access route into the profession of notary, since all candidates who have passed a competition for notarial posts are deemed fit to

practise as notaries after having completed a mandatory 120-day training period. It follows, without prejudice to investigations in that regard by the referring court, that the age limit of 50 years of age set by Article 1 of Law No 1365/1926 does not appear to pursue the aim mentioned in the previous paragraph.

- 36 Thirdly, as for the aim of facilitating the natural turnover and rejuvenation of the profession of notary, it should be recalled that the legitimacy of such an aim of public interest relating to employment policy cannot reasonably be called into question, since it features among the aims expressly laid down in the first subparagraph of Article 6(1) of Directive 2000/78 and, in accordance with the first subparagraph of Article 3(3) TEU, the promotion of a high level of employment is one of the ends pursued by the European Union (see, to that effect, judgment of 2 April 2020, *Comune di Gesturi*, C-670/18, EU:C:2020:272, paragraph 36 and the case-law cited).
- 37 Furthermore, encouragement of recruitment undoubtedly constitutes a legitimate aim of Member States' social or employment policy, in particular where the promotion of access of young people to a profession is involved (judgment of 19 July 2017, *Abercrombie & Fitch Italia*, C-143/16, EU:C:2017:566, paragraph 37 and the case-law cited).
- 38 More specifically, the aim of establishing an age structure that balances young and older employees in order to encourage the recruitment and promotion of young people, to improve personnel management and thereby to prevent possible disputes concerning employees' fitness to work beyond a certain age, while at the same time seeking to provide a high-quality notarial service, can constitute a legitimate aim of employment and labour market policy (see, to that effect, judgment of 21 July 2011, *Fuchs and Köhler*, C-159/10 and C-160/10, EU:C:2011:508, paragraph 50).
- 39 In the present case, it should be noted that, under Article 7 of Law No 1365/1926, a notary may work until he or she reaches 75 years of age. Furthermore, the Italian Government has not adduced any evidence to show that the various age brackets could compete with each other in the specific labour market for notaries. On the contrary, it is apparent from the documents before the Court that, in the context of the competition for notarial posts at issue in the main proceedings, only 419 candidates were admitted following the tests in that competition, whereas 500 notarial positions, which, in accordance with Article 1 of that law, were reserved for persons under 50 years of age, were available. The age limit established by that article does not therefore appear, without prejudice to investigations by the referring court, to be designed to promote the access of young lawyers to the profession of notary.
- 40 In those circumstances, in the light of the factors referred to in paragraphs 33 to 39 of the present judgment, it must be held that while the aims of ensuring that the profession of notary is practised in a stable manner for a significant period before retirement, of safeguarding the proper functioning of notarial privileges and of facilitating the natural turnover and rejuvenation of that profession to which the Italian Government refers may be regarded as legitimate aims for the purposes of Article 6(1) of Directive 2000/78, the national provision at issue in the main proceedings does not appear to pursue such aims, which is a matter for the referring court to determine.
- 41 If that court concludes, however, that that provision pursues those aims, it is also necessary, according to the actual wording of Article 6(1) of Directive 2000/78, for the means used to achieve those aims to be 'appropriate and necessary'.

- 42 Thus, it is for the referring court to determine whether Article 1 of Law No 1365/1926 allows those aims to be achieved without, however, unduly prejudicing the legitimate interests of candidates for the profession of notary who are 50 years of age or older who, by virtue of that provision, are deprived of the possibility of practising that profession.
- 43 In that regard, it should be recalled that it is for the competent authorities of the Member States to find the right balance between the different interests involved (judgment of 2 April 2020, *Comune di Gesturi*, C-670/18, EU:C:2020:272, paragraph 43 and the case-law cited).
- 44 The prohibition of discrimination on grounds of age, referred to in Article 21(1) of the Charter, must be read in the light of the right to engage in work recognised in Article 15(1) thereof. It follows that particular attention must be paid to the participation of older workers in the labour force and thus in economic, cultural and social life. Retaining older workers in the labour force promotes diversity in the workforce. However, the interest represented by the continued employment of those persons must be taken into account in respecting other, potentially divergent, interests (judgment of 2 April 2020, *Comune di Gesturi*, C-670/18, EU:C:2020:272, paragraph 44 and the case-law cited).
- 45 Nevertheless, it is sufficient to recall, as regards the first aim relied on by the Italian Government, that, as has already been stated in paragraph 33 of the present judgment, the right of notaries who leave office upon reaching the authorised age limit for practising that profession – 75 years of age – to be paid a pension is contingent on them having practised that profession for at least 20 years.
- 46 Accordingly, in setting 50 years of age as the age limit for accessing the profession of notary regardless of that minimum period of activity in order to be able to claim payment of a retirement pension when the notary has reached that age limit of 75 years of age, Article 1 of Law No 1365/1926 appears to go beyond what is necessary – which is, however, a matter for the referring court to determine – in order to ensure that the profession of notary is practised in a stable manner for a significant period, in such a way as to safeguard the viability of the social welfare system.
- 47 As regards the second aim advanced by the Italian Government, as has been noted in paragraph 34 of the present judgment, Article 6(1)(c) of Directive 2000/78 allows the fixing of a maximum age for recruitment in the light of the training requirements of the post in question. However, as has been stated in paragraph 35 of the present judgment, given that training for candidates who have passed the competition for notarial posts is limited to a mandatory 120-day training period while those candidates will be permitted to work until 75 years of age, allowing only candidates under 50 years of age to participate in that competition appears to go beyond what is necessary to achieve the aim of ensuring that the training requirements for that work are met.
- 48 As regards the third aim, it is for the referring court to determine whether, in the present case, the national legislature, in exercising its broad discretion in the field of social and employment policy, struck a fair balance between the aim of facilitating the natural turnover and the rejuvenation of the profession of notary, on the one hand, and the need to ensure the ongoing participation of older workers in professional life, since those workers are more vulnerable on account of their age, on the other. Furthermore, as stated in recital 6 of Directive 2000/78, the Community Charter of the Fundamental Social Rights of Workers, adopted at the meeting of the European Council in Strasbourg on 9 December 1989, recognises the need to take appropriate action for the social and economic integration of elderly people.

- 49 In that regard, it should be pointed out that establishing 50 years of age as the age limit for admission to the competition to access the profession of notary leads to an increased number of available positions which may be occupied by young candidates and is thus likely to constitute an appropriate means of achieving the aim of facilitating the natural turnover and rejuvenation of that profession, provided, however, that such a measure does not go beyond what is necessary to achieve that aim and does not unduly prejudice the interests of the persons concerned. It is for the national court, in that context, to take into account not only the fitness of those persons to practise that profession, but also the hardship that measure may cause to the persons concerned (see, to that effect, judgment of 6 November 2012, *Commission v Hungary*, C-286/12, EU:C:2012:687, paragraph 66).
- 50 In the present case, first, it has not been claimed that establishing 50 years of age as the age limit for admission to that competition is justified by how fit the candidates are to practise that profession. Secondly, as is apparent from paragraph 39 of the present judgment, because a significant number of positions were not filled in the course of the competition for notarial posts at issue in the main proceedings, young candidates did not have access to the profession of notary and candidates who had reached 50 years of age were denied the opportunity to showcase their skills by participating in that competition; therefore, in fixing that age limit, Article 1 of Law No 1365/1926 appears to go beyond what is necessary to achieve the aim of facilitating the natural turnover and rejuvenation of that profession.
- 51 In the light of all the foregoing considerations, the answer to the question referred is that Article 21 of the Charter and Article 6(1) of Directive 2000/78 must be interpreted as precluding national legislation which sets 50 years of age as the age limit for participation in the competition for access to the profession of notary, in so far as such legislation does not appear to pursue the aims of ensuring that that profession is practised in a stable manner for a significant period before retirement, of safeguarding the proper functioning of notarial privileges and of facilitating the natural turnover and rejuvenation of that profession and, in any event, goes beyond what is necessary to achieve those aims, which is a matter for the referring court to determine.

Costs

- 52 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 (Second Chamber) hereby rules:

Article 21 of the Charter of Fundamental Rights of the European Union and Article 6(1) 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 precluding national legislation which sets 50 years of age as the age limit for participation in the competition for access to the profession of notary, in so far as such legislation does not appear to pursue the aims of ensuring that that profession is practised in a stable manner for a significant period before retirement, of safeguarding the proper functioning of notarial privileges and of facilitating the natural turnover and rejuvenation of that profession and, in any event, goes beyond what is necessary to achieve those aims, which is a matter for the referring court to determine.

[Signatures]