

JUDGMENT OF THE COURT (Grand Chamber)

16 October 2007\*

In Case C-411/05,

REFERENCE for a preliminary ruling under Article 234 EC, by the Juzgado de lo Social nº 33 de Madrid (Spain), made by decision of 14 November 2005, received at the Court on 22 November 2005, in the proceedings

**Félix Palacios de la Villa**

v

**Cortefiel Servicios SA,**

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Lenaerts and A. Tizzano, Presidents of Chambers, R. Schintgen (Rapporteur), J.N. Cunha Rodrigues, R. Silva de Lapuerta, M. Ilešič, P. Lindh, J.-C. Bonichot and T. von Danwitz, Judges,

\* Language of the case: Spanish.

Advocate General: J. Mazák,  
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 21 November 2006,

after considering the observations submitted on behalf of:

- Mr Palacios de la Villa, by P. Bernal de Pablo Blanco, abogado,
  
- Cortefiel Servicios SA, by D. López González, abogado,
  
- the Spanish Government, by M. Muñoz Pérez, acting as Agent,
  
- Ireland, by D.J. O’Hagen, acting as Agent, N. Travers and F. O’Dubhghaill, BL, and M. McLaughlin and N. McCutcheon, solicitors,
  
- the Netherlands Government, by H.G. Sevenster, M. de Mol and P.P.J. van Ginneken, acting as Agents,

- the United Kingdom Government, by R. Caudwell, acting as Agent, and A. Dashwood, Barrister,
  
- the Commission of the European Communities, by J. Enegren and R. Vidal Puig, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 February 2007,

gives the following

### **Judgment**

- 1 This reference for a preliminary ruling concerns the interpretation of Article 13 EC and Articles 2(1) and (6) 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 reference was made in the course of proceedings between Mr Palacios de la Villa and his employer, Cortefiel Servicios SA ('Cortefiel'), concerning the automatic termination of his contract of employment by reason of the fact that he had reached the age-limit for compulsory retirement, set at 65 years of age by national law.

## Legal background

### *Community rules*

3 Directive 2000/78 was adopted on the basis of Article 13 EC. Recitals 4, 6, 8, 9, 11 to 14, 25 and 36 state:

‘(4) The right of all persons to equality before the law and protection against discrimination constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories. Convention No 111 of the International Labour Organisation (ILO) prohibits discrimination in the field of employment and occupation.

...

(6) 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.

...

- (8) The Employment Guidelines for 2000 agreed by the European Council at Helsinki on 10 and 11 December 1999 stress the need to foster a labour market favourable to social integration by formulating a coherent set of policies aimed at combating discrimination against groups such as persons with disability. They also emphasise the need to pay particular attention to supporting older workers, in order to increase their participation in the labour force.
- (9) Employment and occupation are key elements in guaranteeing equal opportunities for all and contribute strongly to the full participation of citizens in economic, cultural and social life and to realising their potential.

...

- (11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.
- (12) To this end, any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community. ...

(13) This Directive does not apply to social security and social protection schemes whose benefits are not treated as income within the meaning given to that term for the purpose of applying Article 141 of the EC Treaty, nor to any kind of payment by the State aimed at providing access to employment or maintaining employment.

(14) This Directive shall be without prejudice to national provisions laying down retirement ages.

...

(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.

...

(36) Member States may entrust the social partners, at their joint request, with the implementation of this Directive, as regards the provisions concerning collective agreements, provided they take any necessary steps to ensure that they are at all times able to guarantee the results required by this Directive.'

- 4 Article 1 of Directive 2000/78 states: ‘[t]he purpose of this 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 Directive 2000/78, under the heading ‘Concept of discrimination’ states, in paragraphs (1) and (2)(a):

‘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) of Directive 2000/78, under the heading ‘Scope’, provides:

‘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:

...

(c) employment and working conditions, including dismissals and pay

...'

7 Under Article 6 of Directive 2000/78, under the heading 'Justification of differences of treatment on grounds of age':

'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:

(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.

2. Notwithstanding Article 2(2), Member States may provide that the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the grounds of sex.'

- 8 Article 8 of Directive 2000/78, under the heading 'Minimum requirements', is worded as follows:

'1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.

2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.'

9 Article 16 of Directive 2000/78, under the heading 'Compliance', provides:

'Member States shall take the necessary measures to ensure that:

- (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;
  
- (b) any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations are, or may be, declared null and void or are amended.'

10 In accordance with the first paragraph of Article 18 of Directive 2000/78, Member States were to adopt the laws, regulations and administrative provisions necessary to comply with the directive by 2 December 2003 at the latest or could entrust the social partners, at their joint request, with the implementation of the directive as regards provisions concerning collective agreements. In such cases, Member States were to ensure that, no later than 2 December 2003, the social partners introduced the necessary measures by agreement, the Member States concerned being required to take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by that directive. They were forthwith to inform the Commission of the European Communities of those measures.

*National law*

11 From 1980 until 2001 compulsory retirement of workers who had reached a certain age was used by the Spanish legislature as a mechanism to absorb unemployment.

12 Thus the Fifth Additional Provision of Law 8/1980 on the Workers' Statute (Ley 8/1980 del Estatuto de los Trabajadores) of 10 March 1980 provided:

‘The maximum age-limit applicable to capacity to work and the termination of employment contracts shall be set by the Government by reference to the resources of the social security system and the labour market. In any event, the maximum age shall be 69 years, without prejudice to the right to complete qualifying periods for retirement.

Retirement ages may be agreed freely during collective bargaining, without prejudice to the social security provisions in that regard.’

13 Royal Legislative Decree 1/1995 of 24 March 1995 (BOE No 75, of 29 March 1995, p. 9654) approved the consolidated version of Law 8/1980, the Tenth Additional Provision of which (‘the Tenth Additional Provision’) essentially reproduced the Fifth Additional Provision of Law 8/1980 permitting the use of compulsory retirement as an instrument of employment policy.

- 14 Decree-Law 5/2001 of 2 March 2001 on emergency measures to reform the labour market in order to increase employment and to improve its quality, ratified by Law 12/2001 of 9 July 2001, repealed the Tenth Additional Provision with effect from 11 July 2001.
- 15 The national court states in that regard that, on account of the improvement in the economic situation, the Spanish legislature went from regarding compulsory retirement as an instrument favouring employment policy to viewing it as a burden on the social security system, so that it decided to replace the policy of encouraging compulsory retirement with measures intended to promote the implementation of a system of flexible retirement.
- 16 Articles 4 and 17 of the Law 8/1980, in the amended version resulting from Law 62/2003 of 30 December 2003 laying down fiscal, administrative and social measures (BOE No 313 of 31 December 2003, p. 46874) ('the Workers' Statute'), which is designed to transpose Directive 2000/78 into Spanish law and entered into force on 1 January 2004, deal with the principle of non-discrimination, inter alia, on grounds of age.
- 17 According to Article 4(2) of the Workers' Statute:

'Workers have the right, in their employment:

...

(c) not to be discriminated against directly or indirectly, when seeking employment or once in employment, on the basis of sex, marital status, age within the limits laid down by this Law, racial or ethnic origin, social status, religion or beliefs, political ideas, sexual orientation, membership or lack of membership of a trade union or on the basis of their language on Spanish territory. Nor may workers be discriminated against on the basis of disability, provided that they are capable of carrying out the work or job in question.

...'

18 Article 17(1) of the Workers' Statute provides:

'Regulatory provisions, clauses in collective agreements, individual agreements, and unilateral decisions by employers, which involve direct or indirect unfavourable discrimination on the basis of age ... shall be deemed to be null and void.'

19 According to the referring court, the repeal of the Tenth Additional Provision of the Workers' Statute has given rise to many disputes regarding the legality of clauses in collective agreements authorising the compulsory retirement of workers.

20 Subsequently, the Spanish legislature adopted Law 14/2005 on clauses in collective agreements concerning the attainment of normal retirement age (*Ley 14/2005 sobre las cláusulas de los convenios colectivos referidas al cumplimiento de la edad ordinaria de jubilación*), of 1 July 2005 (BOE No 157, of 2 July 2005, p. 23634), which entered into force on 3 July 2005.

21 Law 14/2005 reintroduced the mechanism for compulsory retirement, but laid down in that respect different conditions depending on whether the definitive or transitional rules of that law were applicable.

22 Thus, as regards collective agreements concluded after its entry into force, the sole article of Law 14/2005 reinstates the Tenth Additional Provision of the Workers' Statute as follows:

'Collective agreements may contain clauses providing for the termination of a contract of employment on the grounds that a worker has reached the normal retirement age stipulated in social security legislation, provided that the following requirements are satisfied:

- (a) such a measure must be linked to objectives which are consistent with employment policy and are set out in the collective agreement, such as increased stability in employment, the conversion of temporary contracts into permanent contracts, sustaining employment, the recruitment of new workers, or any other objectives aimed at promoting the quality of employment.
  
- (b) a worker whose contract of employment is terminated must have completed the minimum contribution period, or a longer period if a clause to that effect is contained in the collective agreement, and he must have satisfied the conditions laid down in social security legislation for entitlement to a retirement pension under his contribution regime.'

23 However, as regards collective agreements concluded before its entry into force, the single transitional provision of Law 14/2001 ('the single transitional provision'), imposes only the second of the conditions laid down in the sole article of Law 14/2005, excluding any reference to the pursuit of an aim relating to employment policy.

24 The single transitional provision is worded as follows:

'Clauses in collective agreements concluded prior to the entry into force of this Law, which provide for the termination of contracts of employment where workers have reached normal retirement age, shall be lawful provided it is ensured that the workers concerned have completed the minimum period of contributions and satisfy the other requirements laid down in social security legislation for entitlement to a retirement pension under their contribution regime.

The preceding paragraph is not applicable to legal situations which became definitive before the entry into force of this Law.'

25 The relationship between the parties in the main proceedings is governed by the Textile Trade Collective Agreement for the Autonomous Community of Madrid ('the collective agreement').

26 The collective agreement was concluded on 10 March 2005 and published on 26 May 2005. In accordance with Article 3 thereof, it remained in force until 31 December 2005. As the collective agreement preceded the entry into force of Law 14/2005, the single transitional provision is applicable to it.

27 Thus, the third paragraph of Article 19 of the collective agreement provides:

‘In the interests of promoting employment, it is agreed that the retirement age will be 65 years unless the worker concerned has not completed the qualifying period required for drawing the retirement pension, in which case the worker may continue in his employment until the completion of that period.’

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

28 It is clear from the file transmitted to the Court by the referring court that Mr Palacios de la Villa, who was born on 3 February 1940, worked for Cortefiel from 17 August 1981 as organisational manager.

29 By letter of 18 July 2005, Cortefiel notified him of the automatic termination of his contract of employment on the ground that he had reached the compulsory retirement age provided for in the third paragraph of Article 19 of the collective agreement and that, on 2 July 2005, Law 14/2005 had been published, the single transitional provision of which authorises such a measure.

30 It is common ground that, at the date on which his contract of employment with Cortefiel was terminated, Mr Palacios de la Villa had completed the periods of employment necessary to draw a retirement pension under the social security scheme amounting to 100% of his contribution base of EUR 2 347.78, without prejudice to the maximum limits laid down by national legislation.

- 31 On 9 August 2005, Mr Palacios de la Villa, taking the view that the notification amounted to dismissal, brought an action before the Juzgado de lo Social n° 33 de Madrid. In that action, he requested that the measure taken in his regard be declared null and void on the ground that it was in breach of his fundamental rights and, more particularly, his right not to be discriminated against on the ground of age, since the measure was based solely on the fact that he had reached the age of 65.
- 32 Cortefiel submitted conversely, that the termination of Mr Palacio de Villa's contract of employment was in accordance with the third paragraph of Article 19 of the collective agreement and the single transitional provision and that, furthermore, it was not incompatible with the requirements of Community law.
- 33 The referring court expresses serious doubts as to whether the first paragraph of the single transitional provision complies with Community law, inasmuch as it authorises the maintenance of clauses contained in collective agreements existing at the date of the entry into force of Law 14/2005 that provide for the compulsory retirement of workers if they have reached retirement age and satisfy the other conditions imposed by national social security legislation for entitlement to a contributory retirement pension. That provision does not require the termination of the employment relationship on the ground that the worker has reached retirement age to be justified by the employment policy pursued by the Member State concerned, whereas agreements negotiated after the entry into force of Law 14/2005 may contain compulsory retirement clauses only if, in addition to the condition that the workers concerned must be entitled to a pension, that measure pursues objectives set out in the collective agreement relating to national employment policy, such as increased stability in employment, conversion of temporary into permanent contracts, sustaining employment, the recruitment of new workers or the improvement of the quality of employment.
- 34 In those circumstances, under the same law and in the same economic circumstances, workers who have reached the age of 65 would be treated differently

by reason solely of the fact that the collective agreement applicable to them came into force before or after the date of publication of Law 14/2005, that is, 2 July 2005; if the collective agreement was in force before that date no account would be taken of the requirements of employment policy, even though those requirements are imposed by Directive 2000/78, the time-limit for transposition of which expired on 2 December 2003.

35 It is true that Article 6(1) of Directive 2000/78 authorises an exception to the principle of non-discrimination on the basis of age for the purposes of certain legitimate aims, so long as the means to achieve them are appropriate and necessary. Further, according to the referring court, the definitive rules laid down in the Tenth Additional Provision are undoubtedly covered by Article 6(1), since they require the existence of an actual connection between the compulsory retirement of workers and legitimate employment policy objectives.

36 By contrast, according to the referring court, the first paragraph of the single transitional provision does not require there to be such a connection and, therefore, it does not appear to comply with the conditions laid down in Article 6(1) of Directive 2000/78. Furthermore, from 2001 labour market trends were clearly favourable and the decision of the Spanish legislature to introduce that transitional measure, influenced by the social partners, was aimed at amending the case-law of the Supreme Court. Moreover, the Constitutional Court has never accepted that collective bargaining may in itself constitute an objective and reasonable justification for the compulsory retirement of a worker who has reached a specific age.

37 The referring court adds that Article 13 EC and Article 2(1) of Directive 2000/78 constitute clear and unconditional rules requiring the national court, in accordance

with the principle of the primacy of Community law, to disapply national law which is contrary to it, as in the case of the single transitional provision.

38 Furthermore, in Case C-15/96 *Schöning-Kougebetopoulou* [1998] ECR I-47 the Court has already declared a clause in a collective agreement to be contrary to Community law on the ground that it was discriminatory, holding that, without requiring or waiting for that clause to be abolished by collective bargaining or by some other procedure, the national court must therefore apply the same rules to the members of the group disadvantaged by that discrimination as those applicable to other workers.

39 It follows, in the view of the referring court, that, if Community law were to be interpreted as meaning that it in fact precludes the application in the case in the main proceedings of the first paragraph of the single transitional provision, the third paragraph of Article 19 of the collective agreement would have no legal basis and could not therefore apply in the case in the main proceedings.

40 In those circumstances, the Juzgado de lo Social n° 33 de Madrid decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Does the principle of equal treatment, which prohibits any discrimination whatsoever on the grounds of age and is laid down in Article 13 EC and Article 2(1) of Directive 2000/78, preclude a national law (specifically, the first paragraph of the single transitional provision ...) pursuant to which compulsory retirement clauses contained in collective agreements are lawful, where such clauses provide as sole requirements that workers must have reached normal

retirement age and must have fulfilled the conditions set out in the social security legislation of the Spanish State for entitlement to a retirement pension under their contribution regime?

In the event that the reply to the first question is in the affirmative:

- (2) Does the principle of equal treatment, which prohibits any discrimination whatsoever on the grounds of age and is laid down in Article 13 EC and Article 2(1) of Directive 2000/78, require this court, as a national court, not to apply to this case the first paragraph of the single transitional provision ...?

### **The questions referred for a preliminary ruling**

#### *The first question*

- <sup>41</sup> In order to give a useful reply to that question, it is appropriate to determine, first, whether Directive 2000/78 is applicable to a situation such as that in the main proceedings before examining secondly, and if necessary, whether and to what extent the directive precludes legislation such as that referred to by the national court.

#### Applicability of Directive 2000/78

- <sup>42</sup> As is clear both from its title and preamble and its content and purpose, Directive 2000/78 is designed 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 includes age.

43 More particularly, it follows from Article 3(1)(c) of Directive 2000/78 that it applies, within the framework of the competence conferred on the Community, ‘to all persons ... in relation to employment and working conditions, including dismissals and pay’.

44 It is true that, according to recital 14 in its preamble, Directive 2000/78 is to be without prejudice to national provisions laying down retirement ages. However, that recital merely states that the directive does not affect the competence of the Member States to determine retirement age and does not in any way preclude the application of that directive to national measures governing the conditions for termination of employment contracts where the retirement age, thus established, has been reached.

45 The legislation at issue in the main proceedings, which permits the automatic termination of an employment relationship concluded between an employer and a worker once the latter has reached the age of 65, affects the duration of the employment relationship between the parties and, more generally, the engagement of the worker concerned in an occupation, by preventing his future participation in the labour force.

46 Consequently, legislation of that kind must be regarded as establishing rules relating to ‘employment and working conditions, including dismissals and pay’ within the meaning of Article 3(1)(c) of Directive 2000/78.

47 In those circumstances, Directive 2000/78 is applicable to a situation such as that giving rise to the dispute before the national court.

### The interpretation of Articles 2 and 6 of Directive 2000/78

48 By its first question, the referring court asks essentially whether the prohibition of any discrimination based on age in employment and occupation must be interpreted as meaning that it precludes national legislation such as that in the main proceedings, pursuant to which compulsory retirement clauses contained in collective agreements are regarded as lawful, where such clauses provide as sole requirements that workers must have reached retirement age, set at 65 years by the national legislation, and must fulfil the other social security conditions for entitlement to draw a contributory retirement pension.

49 In that connection, it should be recalled from the outset that, in accordance with Article 1, the aim of Directive 2000/78 is to combat certain types of discrimination, including discrimination on grounds of age, as regards employment and occupation with a view to putting into effect in the Member States the principle of equal treatment.

50 Under Article 2(1) of Directive 2000/78, for the purposes of the Directive, the 'principle of equal treatment' is to mean that there is to be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1. Article 2(2)(a) states that, for the purposes of paragraph 1, 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.

51 National legislation such as that at issue in the main proceedings, according to which the fact that a worker has reached the retirement age laid down by that legislation leads to automatic termination of his employment contract, must be regarded as directly imposing less favourable treatment for workers who have reached that age as compared with all other persons in the labour force. Such legislation therefore establishes a difference in treatment directly based on age, as referred to in Article 2(1) and (2)(a) of Directive 2000/78.

52 Specifically concerning differences of treatment on grounds of age, it is clear from the first subparagraph of Article 6(1) of the directive that such inequalities will not constitute discrimination prohibited under Article 2 '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'. The second subparagraph of Article 6(1) sets out several examples of differences of treatment having characteristics such as those mentioned in the first subparagraph and, therefore, compatible with the requirements of Community law.

53 In this case, it must be observed, as the Advocate General pointed out in point 71 of his Opinion, that the single transitional provision, which allows the inclusion of compulsory retirement clauses in collective agreements, was adopted, at the instigation of the social partners, as part of a national policy seeking to promote better access to employment, by means of better distribution of work between the generations.

54 It is true, as the national court has pointed out, that that provision does not expressly refer to an objective of that kind.

55 However, that fact alone is not decisive.

56 It cannot be inferred from Article 6(1) of Directive 2000/78 that the lack of precision in the national legislation at issue as regards the aim pursued automatically excludes the possibility that it may be justified under that provision.

57 In the absence of such precision, it is important, however, that other elements, taken from the general context of the measure concerned, enable the underlying aim of that law to be identified for the purposes of judicial review of its legitimacy and whether the means put in place to achieve that aim are appropriate and necessary.

58 In this case, it is clear from the referring court's explanations that, first, the compulsory retirement of workers who have reached a certain age was introduced into Spanish legislation in the course of 1980, against an economic background characterised by high unemployment, in order to create, in the context of national employment policy, opportunities on the labour market for persons seeking employment.

59 Secondly, such an objective was expressly set out in the Tenth Additional Provision.

60 Thirdly, after the repeal, in the course of 2001, of the Tenth Additional Provision, and following signature by the Spanish Government and employers' and trade union organisations of the Declaration for Social Dialogue 2004 relating to competitiveness, stable employment and social cohesion, the Spanish legislature reintroduced the compulsory retirement mechanism by Law 14/2005. The aim of Law 14/2005 itself is to create opportunities in the labour market for persons seeking employment. Its single article thus makes it possible, in collective agreements, to include clauses authorising the termination of an employment contract on the ground that the worker has reached retirement age, provided that that measure is 'linked to objectives which are consistent with employment policy and are set out in the collective agreement', such as 'the conversion of temporary contracts into permanent contracts [or] the recruitment of new workers'.

61 In that context, and given the numerous disputes concerning the repercussions of repeal of the Tenth Additional Provision on compulsory retirement clauses contained in collective agreements concluded under Law 8/1980, both in its original version and that approved by Royal Legislative Decree 1/1995, together with the ensuing legal uncertainty for the social partners, the single transitional provision of Law 14/2005 confirmed that it was possible to set an age-limit for compulsory retirement in accordance with those collective agreements.

62 Thus, placed in its context, the single transitional provision was aimed at regulating the national labour market, in particular, for the purposes of checking unemployment.

- 63 That assessment is further reinforced by the fact that, in this case, the third paragraph of Article 19 of the collective agreement expressly mentions the ‘interests of promoting employment’ as an objective of the measure established by that provision.
- 64 The legitimacy of such an aim of public interest cannot reasonably be called into question, since employment policy and labour market trends are among the objectives expressly laid down in the first subparagraph of Article 6(1) of Directive 2000/78 and, in accordance with the first indent of the first paragraph of Article 2 EU and Article 2 EC, the promotion of a high level of employment is one of the ends pursued both by the European Union and the European Community.
- 65 Furthermore, the Court has already held that encouragement of recruitment undoubtedly constitutes a legitimate aim of social policy (see, in particular, Case C-208/05 *ITC* [2007] ECR I-181, paragraph 39) and that assessment must evidently apply to instruments of national employment policy designed to improve opportunities for entering the labour market for certain categories of workers.
- 66 Therefore, an objective such as that referred to by the legislation at issue must, in principle, be regarded as ‘objectively and reasonably’ justifying ‘within the context of national law’, as provided for by the first subparagraph of Article 6(1) of Directive 2000/78, a difference in treatment on grounds of age laid down by the Member States.

67 It remains to be determined whether, in accordance with the terms of that provision, the means employed to achieve such a legitimate aim are ‘appropriate and necessary’.

68 It should be recalled in this context that, as Community law stands at present, the Member States and, where appropriate, the social partners at national level enjoy broad discretion in their choice, not only to pursue a particular aim in the field of social and employment policy, but also in the definition of measures capable of achieving it (see, to that effect, Case C-144/04 *Mangold* [2005] ECR I-9981, paragraph 63).

69 As is already clear from the wording, ‘specific provisions which may vary in accordance with the situation in Member States’, in recital 25 in the preamble to Directive 2000/78, such is the case as regards the choice which the national authorities concerned may be led to make on the basis of political, economic, social, demographic and/or budgetary considerations and having regard to the actual situation in the labour market in a particular Member State, to prolong people’s working life or, conversely, to provide for early retirement.

70 Furthermore, the competent authorities at national, regional or sectoral level must have the possibility available of altering the means used to attain a legitimate aim of public interest, for example by adapting them to changing circumstances in the employment situation in the Member State concerned. The fact that the compulsory retirement procedure was reintroduced in Spain after being repealed for several years is accordingly of no relevance.

- 71 It is, therefore, for the competent authorities of the Member States to find the right balance between the different interests involved. However, it is important to ensure that the national measures laid down in that context do not go beyond what is appropriate and necessary to achieve the aim pursued by the Member State concerned.
- 72 It does not appear unreasonable for the authorities of a Member State to take the view that a measure such as that at issue in the main proceedings may be appropriate and necessary in order to achieve a legitimate aim in the context of national employment policy, consisting in the promotion of full employment by facilitating access to the labour market.
- 73 Furthermore, the measure cannot be regarded as unduly prejudicing the legitimate claims of workers subject to compulsory retirement because they have reached the age-limit provided for; the relevant legislation is not based only on a specific age, but also takes account of the fact that the persons concerned are entitled to financial compensation by way of a retirement pension at the end of their working life, such as that provided for by the national legislation at issue in the main proceedings, the level of which cannot be regarded as unreasonable.
- 74 Moreover, the relevant national legislation allows the social partners to opt, by way of collective agreements — and therefore with considerable flexibility — for application of the compulsory retirement mechanism so that due account may be taken not only of the overall situation in the labour market concerned, but also of the specific features of the jobs in question.

75 In the light of those factors, it cannot reasonably be maintained that national legislation such as that at issue in the main proceedings is incompatible with the requirements of Directive 2000/78.

76 Given the foregoing interpretation of Directive 2000/78, there is no need for the Court to give a ruling in relation to Article 13 EC — also referred to in the first question — on the basis of which that directive was adopted.

77 In the light of all the foregoing considerations, the answer to the first question must be that the prohibition on any discrimination on grounds of age, as implemented by Directive 2000/78, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, pursuant to which compulsory retirement clauses contained in collective agreements are lawful where such clauses provide as sole requirements that workers must have reached retirement age, set at 65 by national law, and must have fulfilled the conditions set out in the social security legislation for entitlement to a retirement pension under their contribution regime, where

- the measure, although based on age, is objectively and reasonably justified in the context of national law by a legitimate aim relating to employment policy and the labour market, and

- it is not apparent that the means put in place to achieve that aim of public interest are inappropriate and unnecessary for the purpose.

*The second question*

- 78 In view of the answer in the negative given to the first question of the referring court, it is unnecessary to answer the second question.

**Costs**

- 79 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:

**The prohibition on any discrimination on grounds of age, as implemented by Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, must be interpreted as not precluding national legislation such as that at issue in the main proceedings, pursuant to which compulsory retirement clauses contained**

**in collective agreements are lawful where such clauses provide as sole requirements that workers must have reached retirement age, set at 65 by national law, and must have fulfilled the conditions set out in the social security legislation for entitlement to a retirement pension under their contribution regime, where**

- the measure, although based on age, is objectively and reasonably justified in the context of national law by a legitimate aim relating to employment policy and the labour market, and**
  
- the means put in place to achieve that aim of public interest do not appear to be inappropriate and unnecessary for the purpose.**

[Signatures]