



## Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

13 November 2014\*

(References for a preliminary ruling — Social policy — Equal treatment in employment and occupation — Charter of Fundamental Rights of the European Union — Article 21 — Directive 2000/78/EC — Articles 2(2), 4(1) and 6(1) — Discrimination on grounds of age — National provision — Condition of recruitment of local police officers — Fixing of a maximum age of 30 — Justification)

In Case C-416/13,

REQUEST for a preliminary ruling under Article 267 TFEU, from the Juzgado de lo Contencioso-Administrativo No 4 de Oviedo (Spain), made by decision of 16 July 2013, received at the Court on 23 July 2013, in the proceedings

**Mario Vital Pérez**

v

**Ayuntamiento de Oviedo,**

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, K. Lenaerts, Vice-President de la Cour, acting as Judge of the Second Chamber, J.-C. Bonichot, A. Arabadjiev and J.L. da Cruz Vilaça (Rapporteur), Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

- Mr Vital Pérez, by M. Noval Pato and I. Fernández-Jardón Fernández, abogados,
- the Spanish Government, by J. García-Valdecasas Dorrego and L. Banciella Rodríguez-Miñon, acting as Agents,
- the German Government, by T. Henze and J. Möller, acting as Agents,
- the French Government, by D. Colas and R. Coesme, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, assisted by S. Varone, avvocato dello Stato,

\* Language of the case: Spanish.

— the European Commission, by L. Lozano Palacios and D. Martin, acting as Agents,  
after hearing the Opinion of the Advocate General at the sitting on 17 July 2014,  
gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 2(2), 4(1) and 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), and of Article 21(1) of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in proceedings between Mr Vital Pérez and the Ayuntamiento de Oviedo (municipality of Oviedo) ('the Ayuntamiento') concerning the latter's decision to approve a notice of competition requiring applicants for local police officer posts not to be older than 30 years of age.

### Legal context

#### *EU law*

- 3 Recitals 18, 23 and 25 in the preamble to Directive 2000/78 read as follows:  
'(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. Such circumstances should be included in the information provided by the Member States to the Commission ...  
...  
(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 its purpose 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 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 of Directive 2000/78/EC provides inter alia:

‘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 that directive is worded as follows:

‘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 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 In Spain, each of Spain's 17 Autonomous Communities has passed laws or regulations containing provisions relating to the rules governing the local police, which are varied so far as concerns the maximum age for access to the profession, with some fixing that age at 30 whilst others do not provide for any limit.

10 Article 18(6) of Law of the Principality of Asturias on the coordination of local police forces (Ley de Coordinación de las Policías Locales de la Comunidad Autónoma del Principado de Asturias) (BOE No 169 of 16 July 2007), defines the duties of local police officers as follows:

‘[p]roviding assistance to citizens, protecting persons and property, the arrest and custody of offenders, conducting crime prevention patrols, traffic control and such other duties as may be assigned to them by superior officers.’

11 Article 32(b) of that law lays down inter alia the following as a general condition of entry into the local police force:

‘...’

(b) be at least 18 years of age and no more than 30 years of age.’

12 Law 2/2007 was adopted by virtue of the powers conferred by the Spanish Constitution on the Autonomous Communities pursuant to Organic law 2/1986 on security forces and services (Ley Orgánica de Fuerzas y Cuerpos de Seguridad) (BOE No 63 of 14 March 1986).

13 Article 11(1) of Organic law 2/1986 provides that the State security forces and services are to have the following duties:

‘1. The State security forces and services shall have as their mission to protect the free exercise of rights and freedoms and the safeguard the safety of citizens by performing the following duties:

- (a) ensuring compliance with general laws and regulations, by following the orders they receive from the authorities, within the scope of their respective powers;
- (b) assisting and protecting people and ensuring the protection and guarding of goods in jeopardy, irrespective of cause;
- (c) guarding and protecting public premises and buildings as required;
- (d) ensuring the protection and safety of high-profile people;
- (e) maintaining and re-establishing, as required, public order and security;
- (f) preventing criminal acts;
- (g) investigating crimes in order to determine and apprehend the presumed perpetrators; seizing the instruments, goods and evidence associated with the crime and making same available to the judge or court having jurisdiction, and drawing up or having drawn up the relevant technical and expert reports;
- (h) gathering, receiving and analysing all information relevant to public order and security, and studying, planning and implementing technical methods for preventing crime;

(i) cooperating with the civil protection services in the event of serious risk, disaster or public calamity, in accordance with the rules laid down in legislation governing civil protection.’

14 Article 53(1) of Organic law 2/1986, which defines the duties of local police forces, is worded as follows:

‘Local police forces shall carry out the following activities:

- (a) protecting the local authorities and guarding their buildings and premises;
- (b) ensuring the order, signalling and control of traffic in the city centre 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 investigative police ...;
- (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 endeavour to prevent the commission of criminal acts ...;
- (h) monitoring public spaces and co-operating 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 resolution of private disputes when requested to do so.’

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

15 On 8 April 2013, Mr Vital Pérez brought an action before the referring court against the Ayuntamiento’s decision of 7 March 2013 approving the specific requirements laid down in the notice of competition intended to fill 15 local police officer posts.

16 Mr Vital Pérez challenges Point 3.2 of the notice of competition, which requires applicants to be no more than 30 years of age, inasmuch as it violates the fundamental right of access on equal terms to public office affirmed in the Spanish Constitution and in Directive 2000/78.

17 Mr Vital Pérez seeks annulment of Point 3.2 of the notice of competition on the ground that it contains a condition which has no basis and is not justified inasmuch as physical fitness is ensured by means of the physical tests specified in the notice of competition. He observes that Point 3.5 of that notice requires applicants to: ‘[p]ossess the appropriate level of physical and mental fitness to perform the duties involved in the post in question and to perform the physical tests’ specified in the notice of competition at issue in the main proceedings.

18 Mr Vital Pérez observes that the various decrees or laws enacted by the Autonomous Communities either do not fix a maximum age (Andalusia, Aragon, the Balearic Islands, the Canary Islands, Castilla-La Mancha, Catalonia and Extremadura) or fix it at 35 years of age (the Basque Country) or 36 (Valencia and Galicia).

- 19 The Ayuntamiento submits that, in setting that age condition, it merely applied Law 2/2007. Moreover, it relied on Article 6 of Directive 2000/78 to justify the measure and, in any event, the Court has previously upheld the condition in its judgment in *Wolf*, C-229/08, EU:C:2010:3.
- 20 Whilst observing that the Tribunal Supremo (Spanish Supreme Court), in its judgments of 21 March and 17 October 2011, ruled that the regulation excluding applicants over 30 years of age from an open competitive examination to recruit trainee inspectors in the national police service was invalid, the referring court takes the view that the age requirement at issue in the main proceedings may not satisfy the proportionality test. It notes that there exist methods less restrictive than that of imposing an age-limit that would make it possible to attain the objective of ensuring that local police officers possess the particular level of physical fitness required for the performance of their professional duties. The completion of stringent physical tests, for example, is one of the specific terms of the notice of competition.
- 21 The referring court also takes the view that the level of physical fitness required to work as a local police officer cannot be compared to the ‘exceptionally high physical capacities’ required in the case of fire fighters due to the different nature of their duties, with the result that the judgment in *Wolf*, EU:C:2010:3, cannot be applied directly to the present case.
- 22 It is against that background that the Juzgado de lo Contencioso-Administrativo No 4 de Oviedo (Court for Contentious Administrative Proceedings, No 4, Oviedo (Spain)) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Do Articles 2(2), 4(1) and 6(1)(c) of [Directive 2000/78] and Article 21(1) of the [Charter], inasmuch as they prohibit all discrimination on grounds of age, preclude the fixing, in a notice of competition issued by a municipality expressly applying a regional law of a Member State, of a maximum age of 30 for access to the post of local police officer?’

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

#### *Preliminary observation*

- 23 In the present request for a preliminary ruling, the referring court is asking the Court to provide guidance on the interpretation of both Article 21 of the Charter and provisions of Directive 2000/78.
- 24 It should be borne in mind that the Court has recognised the existence of a prohibition of discrimination on grounds of age which must be regarded as a general principle of EU law and which was given specific expression by Directive 2000/78 in the field of employment and occupation (judgments in *Küçükdeveci*, C-555/07, EU:C:2010:21, paragraph 21, and *Prigge and Others*, C-447/09, EU:C:2011:573, paragraph 38).
- 25 It follows that, when it is ruling on a request for a preliminary ruling concerning the interpretation of the general principle of non-discrimination on grounds of age, as enshrined in Article 21 of the Charter, and the provisions of Directive 2000/78, in proceedings involving an individual and a public administrative body, the Court examines the question solely in the light of that directive (see, to that effect, judgment in *Tyrolean Airways Tiroler Luftfahrt*, C-132/11, EU:C:2012:329, paragraphs 21 to 23).

*The question referred for a preliminary ruling*

- 26 By its question, the referring court asks, in essence, whether Articles 2(2), 4(1) and 6(1)(c) of Directive 2000/78 must be interpreted as precluding national rules, such as those at issue in the main proceedings, which fix a maximum age of 30 for recruitment of local police officers.
- 27 In order to answer the question referred, it falls to be ascertained whether the national legislation that at issue in the main proceedings falls within the scope of Directive 2000/78 and, if so, whether it is a discriminatory measure based on age that might be considered justified with regard to that directive.
- 28 It should be observed at the outset that it is apparent from both its title, preamble, content and purpose that Directive 2000/78 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 (judgments in *Hütter*, C-88/08, EU:C:2009:381, paragraph 33, and *Georgiev*, C-250/09 and C-268/09, EU:C:2010:699, paragraph 26).
- 29 As regards more specifically the application of that directive in the context of the main proceedings, it follows from Article 3(1)(a) of that directive that it is to apply 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.
- 30 In providing that persons over 30 years of age may not apply for posts in the local police force, Article 32(b) of Law 2/2007 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.
- 31 It follows that that directive applies to a situation such as the one which gave rise to the dispute before the referring court.
- 32 As regards the question whether the legislation at issue in the main proceedings introduces a difference of treatment on grounds of age, it should be remembered that 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) states that, for the purposes of Article 2(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.
- 33 In the present case, Article 32(b) of Law 2/2007 has the consequence that certain persons are treated less favourably than other persons in comparable situations on the sole ground that they have exceeded the age of 30 years. It is obvious that such a rule 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.
- 34 It remains to be ascertained whether such a difference of treatment may be upheld under Articles 4(1) and 6(1) of Directive 2000/78.
- 35 Firstly, according to the very wording of Article 4(1) of Directive 2000/78, ‘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 [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’.

- 36 In that regard the Court has held previously that it is clear from Article 4(1) of Directive 2000/78 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 (see *Wolf*, EU:C:2010:3, paragraph 35, and *Prigge and Others*, EU:C:2011:573, paragraph 66).
- 37 According to settled case-law, the possession of particular physical capacities is one characteristic relating to age (judgments in *Wolf*, EU:C:2010:3, paragraph 41, and *Prigge and Others*, EU:C:2011:573, paragraph 67).
- 38 In the present case, it is apparent from Article 18(6) of Law 2/2007 that the duties of local police officers include providing assistance to citizens, protecting persons and property, the arrest and custody of offenders, conducting crime prevention patrols and traffic control.
- 39 Although it is true that some of those duties, such as providing assistance to citizens or traffic control, are not likely to require the use of physical force, the fact remains that tasks relating to the protection of persons and property, the arrest and custody of offenders and the conduct of crime prevention patrols may require the use of physical force.
- 40 The nature of the latter duties does require a particular physical capability in so far as physical defects in the exercise of those duties may have significant consequences not only for the police officers themselves but also for the maintenance of public order (see, to that effect, judgment in *Prigge and Others*, EU:C:2011:573, paragraph 67).
- 41 It follows that the possession of particular physical capacities may be regarded as a ‘genuine and determining occupational requirement’ within the meaning of Article 4(1) of Directive 2000/78 for the purposes of employment as a local police officer.
- 42 With regard to the objective pursued by the legislation at issue in the main proceedings, the Spanish Government stated that, in fixing the age limit at 30 for recruitment into the local police force, Law 2/2007 is to safeguard the operational capacity and proper functioning of the local police service, by ensuring that newly recruited officers are able to perform the more physically demanding tasks for a relatively long period of their career.
- 43 It should be noted that recital 18 in the preamble to Directive 2000/78 states that the directive does not require the police 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 its operational capacity.
- 44 It is thus apparent that the concern to ensure the operational capacity and proper functioning of the police service constitutes a legitimate objective within the meaning of Article 4(1) of Directive 2000/78 (see, to that effect, judgment in *Wolf*, EU:C:2010:3, paragraph 39).
- 45 It must, however, be ascertained whether, in fixing that age limit, the national legislation at issue in the main proceedings laid down a requirement that is proportionate, meaning that it is suitable for securing the attainment of the objective pursued and does not go beyond what is necessary in order to attain it.
- 46 In that regard, it should be noted that recital 23 in the preamble to Directive 2000/78 states that it is in ‘very limited’ circumstances that a difference of treatment may be justified where a characteristic related, inter alia, to age constitutes a genuine and determining occupational requirement.
- 47 Moreover, in so far as it allows a derogation from the principle of non-discrimination, Article 4(1) of that directive must be interpreted strictly (judgment in *Prigge and Others*, EU:C:2011:573, paragraph 72).

- 48 It must be determined whether, in the light of the discussion in paragraphs 39 to 41 of this judgment, the particular physical capacities required for the post of local police officer are inevitably related to a particular age and are not found in persons over a certain age.
- 49 The following must be taken into account for the purposes of that determination.
- 50 Firstly, it is apparent from the order for reference that there is a clear disparity in the autonomous communities' legislation governing local police officers as regards the fixing of a maximum age for becoming a police officer. Some of the autonomous communities have legislation fixing that age at 30 or more (35, 36 or 40), whilst others impose no limit at all.
- 51 Secondly, in its reply to a written question from the Court, the Spanish Government confirmed that the condition setting a maximum age of 30 for applying to become an officer in the national police force — whose duties as laid down in Article 11 of Law 2/1986 are similar to those assigned to the local police — has been abolished.
- 52 Thirdly, it should be noted that, in its judgment in *Wolf*, EU:C:2010:3, paragraph 44, the Court held that a measure which sets the maximum age for recruitment to intermediate career posts in the fire service at 30 years may be regarded as appropriate to the objective of ensuring the operational capacity and proper functioning of the service concerned.
- 53 However, the Court reached that conclusion only after having found, on the basis of scientific data submitted to it, that some of the tasks of persons in the intermediate career of the fire service, such as fighting fires, required 'exceptionally high' physical capacities and that very few officials over 45 years of age have sufficient physical capacity to perform the fire-fighting part of their activities. In the Court's view, recruitment at an older age would have the consequence that too large a number of officials could not be assigned to the most physically demanding duties. Similarly, such recruitment would not allow the officials thus recruited to be assigned to those duties for a sufficiently long period. Finally, the rational organisation of the professional fire service requires, for the intermediate career, a correlation between the physically demanding posts not suitable for older officials and the less physically demanding posts suitable for those officials (judgment in *Wolf*, EU:C:2010:3, paragraphs 41 and 43).
- 54 According to the findings of the referring court, given the tasks assigned to local police officers, as described in paragraph 38 of this judgment, not all of the capacities those officers must possess in order to be able to perform some of their duties are comparable to the 'exceptionally high' physical capacities which are regularly required of officials in the fire service, most notably in fighting fires.
- 55 It should be noted that, as indicated in paragraph 17 of this judgment, Point 3.5 of the notice of competition intended to fill local police officer posts for the Ayuntamiento requires applicants to possess 'the appropriate level of physical and mental fitness to perform the duties involved in the post in question and to perform the physical tests' specified in that notice. This involves stringent; eliminatory physical tests which, according to the referring court, would make it possible to attain the objective of ensuring that local police officers possess the particular level of physical fitness required for the performance of their professional duties in a less binding manner than the fixing of a maximum age limit.
- 56 There is, moreover, nothing in the case-file or in the written observations submitted to the Court to indicate that the objective of safeguarding the operational capacity and proper functioning of the local police service makes it necessary to maintain a particular age structure, which in turn requires the recruitment exclusively of officials under 30 years of age.
- 57 It follows from those considerations that, in fixing such an age limit, Law 2/2007 imposed a disproportionate requirement.

- 58 Consequently, Article 4(1) of Directive 2000/78 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which sets the maximum age for recruitment of local police officers at 30 years.
- 59 Secondly, regarding Article 6(1) of Directive 2000/78, it should be observed that that provision provides that differences in treatment on grounds of age are not to 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. Point (c) of the second subparagraph of Article 6(1), referred to explicitly by the referring court in its question, provides that those differences in treatment may include ‘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’.
- 60 It must accordingly be ascertained whether the condition setting a maximum age of 30 years for recruitment as a local police officer, as laid down in Article 32(b) of Law 2/2007, is justified by a legitimate aim within the meaning of Article 6(1) of Directive 2000/78 and whether the means of achieving that aim are appropriate and necessary.
- 61 Law 2/2007, at issue in the main proceedings, does not contain any reference to the objectives it pursues in Article 32(b).
- 62 Nevertheless, as the Court has held, it cannot be inferred from Article 6(1) of Directive 2000/78 that a lack of precision in the national legislation at issue in the main proceedings 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, derived from the general context of the measure concerned, should make it possible to identify the underlying aim of that measure for the purposes of review by the courts as to its legitimacy and as to whether the means put in place to achieve that aim are appropriate and necessary (judgments in *Palacios de la Villa*, C-411/05, EU:C:2007:604, paragraphs 56 and 57, and *Commission v Hungary*, C-286/12, EU:C:2012:687, paragraph 58).
- 63 It should be noted, first of all, that although the Spanish Government referred to the need for a balanced distribution among age groups as an objective of the measure at issue, there is nothing in the evidence submitted to the Court showing that the measure is specifically aimed at encouraging new recruitment. It cannot, therefore, be considered suitable for furthering employment policy objectives for the purposes of Article 6(1) of Directive 2000/78.
- 64 It is, however, clear from the considerations put forward by the referring court, which has sole jurisdiction to interpret the applicable national legislation, that, given the potential application of Article 6(1) of Directive 2000/78 in the main proceedings, the age requirement provided for in Law 2/2007 is based on the training requirements of the post in question and the need for a reasonable period of employment before retirement or transfer to another activity.
- 65 Since those objectives are stated in point (c) of the second subparagraph of Article 6(1) of Directive 2000/78, they are capable of justifying a difference in treatment on grounds of age ‘objectively and reasonably’ and ‘within the context of national law’, as provided for in Article 6(1).
- 66 It is also necessary to ascertain whether the means used to achieve that aim are ‘appropriate and necessary’.
- 67 It is important to bear in mind in this regard that the Member States enjoy a broad discretion in the choice of the measures capable of achieving their objectives in the field of social and employment policy. However, that discretion cannot have the effect of frustrating the implementation of the

principle of non-discrimination on grounds of age (judgments in *Age Concern England*, C-388/07, EU:C:2009:128, paragraph 51, and *Ingeniørforeningen i Danmark*, C-499/08, EU:C:2010:600, paragraph 33).

- 68 As regards, firstly, the objective relating to the training requirements of the post of local police officer, Point 7 of the notice of competition approved by the Ayuntamiento states that before entering service the applicants who have passed the competition must follow a period of ‘selective training’, the length of which is set by the regional academy of local police services or by the Ayuntamiento.
- 69 Article 36 of Law 2/2007, which is the only provision of that law governing training of local police officers, merely provides that the academy of local police services of the Principality of Asturias ‘shall ensure the training ..., promotion and specialisation’ of members of the local police force, without providing any further detail on the features of that training.
- 70 Nor has any evidence been submitted to the Court to show that the age limit for recruitment is appropriate and necessary in the light of the objective of ensuring training of the officers concerned.
- 71 Regarding, secondly, the objective of ensuring a reasonable period of employment before retirement, it should be noted at the outset that, according to the information provided by the referring court, the age of retirement for local police officers is fixed at 65 years of age. Although the referring court also refers to transfer to another activity at the age of 58, it is merely an option offered to local police officers at their request and has no bearing on retirement age.
- 72 It follows that national legislation such as that at issue in the main proceedings, which fixes a maximum recruitment age of 30 for local police officers, cannot be considered necessary in order to ensure that those officers have a reasonable period of employment before retirement for the purposes of point (c) of the second subparagraph of Article 6(1) of Directive 2000/78. The fact that the ‘normal’ retirement age under the general social security scheme is fixed at 67 is entirely irrelevant in that regard.
- 73 Therefore, the difference of treatment resulting from Article 32(b) of Law No 2/2007 cannot be justified under Article 6(1)(c) of Directive 2000/78.
- 74 In those circumstances, the answer to the question referred is that Articles 2(2), 4(1) and 6(1)(c) of Directive 2000/78 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which sets the maximum age for recruitment of local police officers at 30 years.

### **Costs**

- 75 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:

**Articles 2(2), 4(1) and 6(1)(c) 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, such as that at issue in the main proceedings, which sets the maximum age for recruitment of local police officers at 30 years.**

[Signatures]