



## Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

10 November 2016\*

(Reference for a preliminary ruling — Social policy — Principles of equal treatment and of non-discrimination on grounds of age — Directive 2000/78/EC — Equal treatment in employment and occupation — Articles 2, 3 and 6 — Scope — Difference in treatment on grounds of age — National legislation capping deductions of training costs incurred after a certain age — Access to vocational training)

In Case C-548/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), made by decision of 16 October 2015, received at the Court on 21 October 2015, in the proceedings

**J.J. de Lange**

v

**Staatssecretaris van Financiën,**

THE COURT (Sixth Chamber),

composed of J.-C. Bonichot, acting as President of the Chamber, A. Arabadjiev (Rapporteur) and C.G. Fernlund, Judges,

Advocate General P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Netherlands Government, by M. Bulterman and J. Langer, acting as Agents,
- Ireland, by E. Creedon, J. Quaney and A. Joyce, acting as Agents, and by D. Fennelly, Barrister,
- the Swedish Government, by A. Falk, C. Meyer-Seitz, U. Persson, N. Otte Widgren, E. Karlsson and L. Swedenborg, acting as Agents,
- the European Commission, by D. Martin and M. van Beek, acting as Agents,

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

\* Language of the case: Dutch.

gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the principle of non-discrimination on grounds of age and of Articles 3(1)(c) and 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 J.J. de Lange and the Staatssecretaris van Financiën (State Secretary for Finance, Netherlands) in respect of the latter's refusal to grant Mr de Lange a right to full deduction of his training costs.

### Legal context

#### *EU law*

- 3 As provided in Article 1 of Directive 2000/78, the latter's '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'.
- 4 Article 2 of that directive states:
  - '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;
    - (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:
      - (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary ...
- 5 Article 3 of Directive 2000/78, entitled 'Scope', provides:
  - '1. Within the limits of the areas of competence conferred on the [European Union], this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:  
...
  - (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

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

...'

6 Article 6 of Directive 2000/78 reads as follows:

'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;

...'

7 Article 16 of Directive 2000/78, entitled '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;

...'

*Netherlands law*

8 Article 6.30 of the Wet inkomstenbelasting 2001 (2001 Law on income tax), in the version applicable to the dispute in the main proceedings ('the Law on income tax'), provides:

'1. Training expenditure is deductible if the combined amount exceeds EUR 500 and, [for training undertaken] beyond the standard period of study, if the combined amount does not exceed EUR 15 000.

...

3. The standard period of study is the period not exceeding 16 calendar quarters, to be specified by the taxable person, during which, after reaching the age of 18 but before reaching the age of 30, he devotes the time available for work largely to a training course with a total workload of such a magnitude that [, in addition to the training,] full-time employment is not possible.'

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

9 In the course of 2008, when he was 32 years old, Mr de Lange started training as a commercial airline pilot. In his 2009 declaration for income tax and social security contributions, he included, as a personal deduction, an amount of EUR 44 057 corresponding to the costs stemming from that training.

- 10 It follows from the order for reference that the legislation at issue in the dispute in the main proceedings allows, under certain conditions, persons under the age of 30 to deduct in full from their taxable income the costs of vocational training. By contrast, that right to deduction is limited to an amount of EUR 15 000 for persons who have reached that age.
- 11 The Netherlands tax authorities thus acknowledged the applicant's right, based on Article 6.30 of the Law on income tax, to a flat-rate deduction of EUR 15 000 only.
- 12 The action brought by Mr de Lange against that decision having been dismissed by the first-instance and appellate courts, Mr de Lange has appealed on a point of law to the referring court.
- 13 That court is unsure as to the applicability of Directive 2000/78 and of the principle of non-discrimination on grounds of age to a taxation scheme concerning the deduction of study costs. As appropriate, it queries whether the difference in treatment which arises from such a scheme and which consists in the granting, or not, of a right to full deduction on the basis, in particular, of the criterion of age can be justified.
- 14 In those circumstances, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- '1. Must Article 3 of Directive 2000/78 be interpreted as meaning that that provision applies to a concession contained in tax legislation on the basis of which study costs may, under certain conditions, be deducted from the taxable income?

In the event that the Court answers the first question referred in the negative:

2. Must the principle of non-discrimination on grounds of age, as a general principle of EU law, be applied to a tax concession on the basis of which training expenditure is deductible only under certain circumstances, even when that tax concession falls outside the material scope of Directive 2000/78 and when that arrangement does not implement EU law?
3. (a) Can differences in treatment which are contrary to the principle of non-discrimination on grounds of age, as a general principle of EU law, be justified in a way provided for in Article 6 of Directive 2000/78?  
(b) If not, what criteria apply to the application of that principle or to the justification of a distinction based on age?
4. (a) Should Article 6 of Directive 2000/78 and/or the principle of non-discrimination on grounds of age be interpreted as justifying a difference in treatment on the grounds of age if the ground for that difference in treatment relates to only some of the cases affected by that distinction?  
(b) Can a distinction based on age be justified by the view of the legislature that beyond a certain age a tax concession need not be available because it is the "personal [financial] responsibility" of the person claiming it to achieve the objective pursued by the concession?"

## Findings of the Court

### *The first question*

- 15 By its first question, the referring court asks, in essence, whether Article 3(1)(b) of Directive 2000/78 must be interpreted as meaning that a taxation scheme, such as that at issue in the main proceedings, which provides that the tax treatment of vocational training costs incurred by a person differs depending on that person's age, falls outside the material scope of that directive.

- 16 It must be recalled from the outset that, according to settled case-law of the Court, it is apparent both from the title and preamble and from the content and purpose of Directive 2000/78 that that directive is intended to lay down a general framework in order to guarantee equal treatment in employment and occupation for all persons, by offering them effective protection against discrimination on any of the grounds mentioned in its Article 1, which include age (judgment of 26 September 2013, *Dansk Jurist- og Økonomforbund*, C-546/11, EU:C:2013:603, paragraph 23 and the case-law cited, and judgment of 2 June 2016, C, C-122/15, EU:C:2016:391, paragraph 19).
- 17 Specifically, Article 3(1)(b) of Directive 2000/78 provides, in particular, that the directive applies, within the limits of the areas of competence conferred on the European Union, to all persons in relation to access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience.
- 18 In that respect, it must be pointed out, as the referring court has done, that, while the existence and scope of a right to deduct, such as that laid down in Article 6.30 of the Law on income tax, are not a precondition, as such, for access to vocational training, the fact remains that the resulting financial consequences may affect the actual accessibility to such training.
- 19 The Netherlands Government argues that the tax concession at issue in the main proceedings seeks to promote the access of young people to training and to improve their position on the labour market. The right to deduct laid down in Article 6.30 of the Law on income tax is thus designed to help young people by offering them, over a given ordinary period of studies, tax concessions which will make it easier for them to study during that period and, thus, gain a firm position on the labour market.
- 20 In those circumstances, a taxation scheme such as that at issue in the main proceedings can be regarded as relating to access to vocational training, within the meaning of Article 3(1)(b) of Directive 2000/78.
- 21 Thus, and read in the light of Article 16(a) of Directive 2000/78, pursuant to which Member States must take the measures necessary to ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished, Article 3(1)(b) of that directive must be taken to mean that it also covers a tax provision such as that at issue in the main proceedings, adopted with the aim of promoting access to training for young people and, consequently, improving their position on the labour market (see, by analogy, judgment of 21 July 2005, *Vergani*, C-207/04, EU:C:2005:495, paragraph 26).
- 22 It follows from the foregoing that Article 3(1)(b) of Directive 2000/78 must be interpreted as meaning that a taxation scheme, such as that at issue in the main proceedings, which provides that the tax treatment of vocational training costs incurred by a person differs depending on his age, comes within the material scope of that directive to the extent to which the scheme is designed to improve access to training for young people.

### *The second question*

- 23 In the light of the answer to the first question, there is no need to answer the second question, which was raised merely in case the Court should find that Directive 2000/78 is not applicable to the dispute in the main proceedings.

*The third and fourth questions*

- 24 By its third and fourth questions, which should be examined together, the referring court asks, essentially, whether Article 6(1) of Directive 2000/78 must be interpreted as precluding a taxation scheme, such as that at issue in the main proceedings, which allows persons who have not yet reached the age of 30 to deduct in full, under certain conditions, vocational training costs from their taxable income, whereas that right to deduct is restricted in the case of persons who have reached that age.
- 25 In accordance with that provision, it is necessary to examine whether the difference in treatment based on the age of the persons who are undertaking such training is objectively and reasonably justified by a legitimate objective, whether the means relied on to attain that objective are appropriate and whether they do not go beyond what is necessary to attain the objective pursued by the national legislature.
- 26 Article 6(1)(a) of Directive 2000/78 provides, furthermore, that these differences of treatment may include, *inter alia*, the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, in order to promote their vocational integration or ensure their protection.
- 27 Consequently, the objective of promoting the position of young people on the labour market in order to promote their vocational integration or ensure their protection can be regarded as legitimate for the purposes of Article 6(1) of Directive 2000/78.
- 28 It is thus necessary to examine whether the means used to attain that objective are appropriate and necessary.
- 29 As regards, in the first place, the appropriateness of a taxation scheme such as that in the main proceedings, it is common ground that such a scheme is capable of improving the position of young people on the labour market in that, for them, it amounts to an incentive to pursue vocational training. It is, however, for the national court to determine whether that is indeed the case.
- 30 In the second place, the referring court questions whether the contested taxation scheme is strictly necessary.
- 31 In that respect, the Netherlands Government observes that, while this scheme reserves solely to persons under the age of 30 the right to deduct the whole of their training costs from their taxable income, persons over the age of 30 are none the less not excessively disadvantaged by that scheme. Persons over the age of 30 enjoy, each year, a right to deduct training expenditure of up to EUR 15 000, irrespective of whether the costs incurred concern a first cycle of studies or a further cycle of studies.
- 32 The Netherlands Government adds that such a right to deduct may be exercised without any limitation in time, whereas the possibility, for persons under the age of 30, to deduct the whole of their training costs is restricted to an ordinary period of study of 16 calendar quarters. Finally, the Netherlands Government points out that training costs amount to an average of EUR 15 000 per annum.
- 33 Finally, as to the question whether it is justified to exclude persons over the age of 30 from the right to full deduction of training costs, the Netherlands Government submits that those persons have generally had the opportunity to undertake prior training and to pursue a professional activity, with the result that, being in a better financial position than young people who have recently left the school system, they are able to bear at least in part the financial burden of new training.

- 34 It does not appear, account being taken of the broad discretion enjoyed by the Member States and both sides of industry enjoy in the field of social policy and employment, that a Member State which adopts a taxation scheme such as that at issue in the main proceedings goes beyond what is necessary to attain the objective of promoting the position of young people on the labour market.
- 35 In the light of the foregoing, the answer to the third and fourth questions is that Article 6(1) of Directive 2000/78 must be interpreted as not precluding a taxation scheme, such as that at issue in the main proceedings, which allows persons who have not yet reached the age of 30 to deduct in full, under certain conditions, vocational training costs from their taxable income, whereas that right to deduct is restricted in the case of persons who have reached that age, in so far as, first, that scheme is objectively and reasonably justified by a legitimate objective relating to employment and labour market policy and, second, the means of attaining that objective are appropriate and necessary. It is for the national court to determine whether that is the case in the main proceedings.

### **Costs**

- 36 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 (Sixth Chamber) hereby rules:

- 1. Article 3(1)(b) 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 meaning that a taxation scheme, such as that at issue in the main proceedings, which provides that the tax treatment of vocational training costs incurred by a person differs depending on his age, comes within the material scope of that directive to the extent to which the scheme is designed to improve access to training for young people.**
- 2. Article 6(1) of Directive 2000/78 must be interpreted as not precluding a taxation scheme, such as that at issue in the main proceedings, which allows persons who have not yet reached the age of 30 to deduct in full, under certain conditions, vocational training costs from their taxable income, whereas that right to deduct is restricted in the case of persons who have reached that age, in so far as, first, that scheme is objectively and reasonably justified by a legitimate objective relating to employment and labour market policy and, second, the means of attaining that objective are appropriate and necessary. It is for the national court to determine whether that is the case in the main proceedings.**

[Signatures]