



Court of Justice of the European Union

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Judgments in Cases C-229/08 and C-341/08

Colin Wolf v Stadt Frankfurt am Main

Domnica Petersen v Berufungsausschuss für Zahnärzte für den Bezirk

Westfalen-Lippe

Press and Information

Setting a maximum recruitment age of 30 for certain firefighters and a retirement age of 68 for panel dentists is permissible

Those age limits do not constitute prohibited discrimination on grounds of age in the case of firemen who are directly involved in fighting fires and, in the case of dentists, only if the limit is an appropriate and consistent response to an objective of protection of health or employment policy

Directive 2000/78¹ prohibits discrimination on grounds of age in the field of employment and occupation. However, the directive does not preclude national measures which are necessary for the protection of health. It also allows the national legislature to provide, in certain cases, that a difference of treatment, although based on age or a characteristic related to age, is not discrimination and is not therefore prohibited.

A difference of treatment based on a characteristic related to age is thus permissible where, because of the nature of an occupational activity or the context in which it is carried out, that characteristic constitutes a genuine and determining occupational requirement. A difference of treatment on grounds of age may also be accepted if it is necessary for the protection of health or if it is justified by a legitimate aim, including employment policy, labour market and vocational training objectives

The Land of Hesse (Germany) has a maximum age of 30 for the recruitment of officials in the intermediate career in the fire service, whose duties include fighting fires. The age limit is intended to guarantee the operational capacity and proper functioning of the professional fire service.

Colin Wolf applied to the City of Frankfurt for an intermediate career post in the fire service. His application was not considered, because he was over the age limit of 30. He was 29 when he made the application, but would have been 31 on the date of the next recruitment. The Administrative Court of Frankfurt am Main, before which Mr Wolf is claiming damages from the City of Frankfurt, put questions to the Court of Justice on the discretion available to the national legislature in providing that differences of treatment on grounds of age do not constitute discrimination prohibited by Community law.

In its judgment in the *Wolf* case, the Court finds that the directive does not preclude that age limit as laid down by the Land of Hesse for recruitment to intermediate career posts in the fire service.

The difference of treatment on grounds of age produced by that age limit fulfils all the conditions for justification laid down by the directive. Thus the concern to ensure the operational capacity and proper functioning of the professional fire service constitutes a legitimate aim. In addition, the possession of especially high physical capacities may be regarded as a genuine and determining occupational requirement for carrying on the occupation of a person in the intermediate career of the fire service, whose tasks include fighting fires and rescuing persons. The need to possess full physical capacity to carry on that activity is related to the age of the persons in that career, since, according to scientific data submitted by the German Government, very few officials over 45 years of age have sufficient physical capacity to perform the fire-fighting part of their activities.

¹ 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).

Furthermore, the age limit may be regarded, first, as appropriate to the objective of ensuring the operational capacity and proper functioning of the professional fire service and, second, as not going beyond what is necessary to achieve that objective.

As regards the *Petersen* case, the German Social Security Code, in the version applicable in this case, provided that admission to practise as a panel dentist in the German statutory health insurance scheme expired at the end of the calendar quarter in which the dentist completed his or her 68th year. Outside the panel system, dentists can practise their profession whatever their age. In Germany 90% of patients are covered by the statutory health insurance scheme.

Domnica Petersen was admitted to provide panel dental care from 1974. She reached the age of 68 in April 2007. Before the Administrative Court of Dortmund (Germany), she challenged the decision of the relevant Admissions Board for Dentists that her authorisation to practise as a panel dentist would expire at the end of June 2007. That court puts several questions to the Court of Justice on the compatibility of that age limit with Directive 2000/78. It states that, according to the Federal Constitutional Court, the age limit is justified by the need to protect patients and, according to the Federal Social Court, it is justified by the aim of maintaining employment possibilities for young panel dentists.

In its judgment in the *Petersen* case, the Court finds that a Member State may legitimately consider it necessary to set an age limit for the practice of a medical profession such as that of a dentist, in order to protect the health of patients.

However, the directive precludes a national measure setting a maximum age for practising as a panel dentist, in this case 68 years, where the sole aim of that measure is to protect the health of patients against the decline in performance of those dentists after that age, since that age limit does not apply to non-panel dentists. Such a measure lacks consistency and cannot therefore be regarded as necessary for the protection of health.

On the other hand, the directive does not preclude such an age limit where its aim is to share out employment opportunities among the generations within the profession of panel dentist, if, taking into account the situation in the labour market concerned, the measure is appropriate and necessary for achieving that aim. The age of 68 would appear to be sufficiently high to serve as the endpoint of admission to practise as a panel dentist.

It is for the national court to identify the aim pursued by the age limit for panel dentists. If the age limit, having regard to its objective, were contrary to the directive, it would be for the national court hearing a dispute between an individual and an administrative body such as the Admissions Board for Dentists to decline to apply it, even if it had been introduced before the directive and national law made no provision for disapplying it.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of Community law or the validity of a Community act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which the same issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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