



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-416/13  
Vital Pérez

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## **According to Advocate General Mengozzi, a maximum age of 30 for participation in a recruitment procedure for the local police service is contrary to EU law**

*The Advocate General points out the differences between the duties of local police officers and the more specific ones undertaken by firemen*

The Equal Treatment in Employment Directive<sup>1</sup> lays down a general framework for combating, with regard to employment and working conditions, discrimination based on various grounds, with a view to putting into effect in the Member States the principle of equal treatment. The directive prohibits, in particular, **any form of discrimination in employment based directly or indirectly on age.**

Mr Vital Pérez challenged a decision of the municipal council of Oviedo, approving the specific requirements and conditions laid down in a notice of competition to fill 15 posts as local police officers. According to one of those requirements, the candidates may not be older than 30 years of age. The municipality of Oviedo maintains that the notice of competition is consistent with the law in force in the Autonomous Community of the Principality of Asturias and that the Court has already ruled in favour of such an age limit in a similar case concerning access to an intermediate career post in the fire service in Germany.<sup>2</sup>

The Juzgado Contencioso-Administrativo de Oviedo (Administrative Court, Oviedo, Spain) has asked the Court of Justice whether the directive and the EU Charter of Fundamental Rights allow, in a notice of competition issued by a municipality applying a regional law of a Member State, a maximum age of 30 to be set for access to the post of local police officer.

In his Opinion today, Advocate General Paolo Mengozzi has suggested that the Court answer that **the directive must be interpreted as precluding national legislation**, such as the law of the Autonomous Community of the Principality of Asturias, **which sets at 30 years of age the maximum age for participation in a selection procedure for recruitment to the local police service.**

The Advocate General notes, first of all, that the directive provides for an **exception common to all the grounds of discrimination mentioned in the directive**, on the basis of which Member States may provide that a difference of treatment based on a characteristic related to any of those grounds does 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 is a genuine and determining occupational requirement**, provided that the objective is legitimate and the requirement is proportionate.

According to the Advocate General, **it is not possible to conclude that the possession of 'exceptionally high physical capacities' is a genuine and determining requirement for performing the function of local police officer** in Asturias, given that **the activities of such officials cover several areas** and include operations which may require the use of physical force

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<sup>1</sup> 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).

<sup>2</sup> Case [C-229/08](#) *Wolf*,

and those which are less demanding from a psychophysical point of view. The Advocate General points out **the differences between the operations of the local police services in Spain and the activities of persons in an intermediate career post in the fire service**, considered by the Court in the judgment in *Wolf*, a feature of which is their physical nature. He adds that **it cannot be said that the physical capacities required for those activities are of necessity related to a particular age** and maintains that **the maximum age limit of 30 years of age is neither proportionate nor necessary**, since the possession of those physical capacities may be adequately assessed on the basis of the physical tests and of the medical exclusions laid down in the notice of competition.

With regard to **the specific exception relating to age**, the Advocate General notes that, according to the directive, Member States may provide that differences of 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 of social policy and if the means of achieving that aim are appropriate and necessary.

The Advocate General considers, however, that **the difference of treatment on grounds of age inherent in the maximum age limit set in the contested notice of competition cannot be justified under the specific exception set out in the directive**. Therefore, **that age limit appears not to be proportionate to the objectives under consideration**.

After recalling that not all public interest objectives pursued by Member States qualify for the purposes of applying that exception, but only those ascribable to social policy objectives, the Advocate General maintains that **the contested age limit goes far beyond what can be considered necessary for training requirements and for the purposes of ensuring that new recruits serve for a reasonable period before retirement (at 65 years of age) or transfer to activities that are less demanding from a psychophysical point of view (which can be requested at 58 years of age)**.

The Advocate General adds, finally, that **neither the requirements of public safety nor the aim of safeguarding the operational capacity of the local police service can justify the contested age limit under the exception based on legitimate social policy aims**. The difference in treatment stemming from such an age limit is not strictly necessary in order to ensure attainment of the above-mentioned objectives: no limit of this kind is imposed for the Spanish national police service or for local police services in other autonomous communities, the legislation of other autonomous communities provides for a higher maximum age and a similar age limit laid down for admission to the competition to recruit trainee inspectors in the national police service has been declared illegal by the Spanish Tribunal Supremo.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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 EU law or the validity of a European Union 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 a similar issue is raised.

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

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