



Press and Information

Court of Justice of the European Union

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Judgment in Case C-447/09

Reinhard Prigge, Michael Fromm and Volker Lambach v Deutsche Lufthansa AG

Prohibiting airline pilots from working after the age of 60 constitutes discrimination on grounds of age

While the right to act as a pilot may be limited from that age, total prohibition goes beyond that which is necessary to ensure air traffic safety

The directive on equal treatment in employment and occupation¹ prohibits any unjustified difference in treatment at work that is related to age. Nevertheless, Member States, when implementing the directive, may provide that a difference in treatment which is based on workers' physical capabilities, which themselves are related to age, does not constitute discrimination if having such capabilities is a genuine and determining requirement for being able to carry out a professional activity. Similarly, the directive does not prevent Member States from adopting all measures necessary to ensure the maintenance of public security.

Moreover, Member States may entrust the implementation of the directive to social partners.

International and German legislation provide that, between the ages of 60 and 64, an airline pilot may not continue to act as a pilot unless he is a member of a multi-pilot crew and the other pilots are under 60. However, that legislation prohibits pilots from acting as pilots beyond 65.

The collective agreement applicable to the crew of the German airline Deutsche Lufthansa – which is recognised by German law – prohibits pilots from acting as pilots after the age of 60.

Reinhard Prigge, Michael Fromm and Volker Lambach were employed for many years by Deutsche Lufthansa as pilots then flight captains. When they reached 60 years of age their employment contracts terminated automatically, in accordance with the collective agreement. Considering themselves to be victims of discrimination on grounds of age, which is prohibited by the directive, they brought an action before the German courts for a declaration that their employment relationships with Deutsche Lufthansa had not terminated at age 60 and an order that their employment contracts should be continued.

The Bundesarbeitsgericht (Federal Labour Court, Germany) asked the Court of Justice whether a collective agreement which provides for an age-limit of 60 for airline pilots for the purposes of air safety is compatible with EU law.

The Court recalls, firstly, that the collective agreements entered into with the social partners must, as with the national laws of the Member States, respect the principle of non-discrimination on grounds of age, which is recognised as a general principle of EU law and given specific expression by the directive in the domain of employment and occupation.

Next, the Court states that the limitation of the possibility for pilots to act as pilots to age 60 pursues the objective of guaranteeing the safety of passengers, persons in areas over which aircraft fly and the safety and health of pilots themselves, which may justify a difference in treatment, and that that limitation may be provided for in a collective agreement. However, the Court notes that international and German legislation considered that it was not necessary to

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)

prohibit pilots from acting as pilots after the age of 60 but that it sufficed merely to restrict those activities. The Court therefore holds that **the prohibition on piloting after that age, provided for by the collective agreement, is not a necessary measure for the protection of public health and security.**

The Court moreover states that possessing particular physical capabilities may be considered as a genuine and determining occupational requirement for acting as an airline pilot and that the possession of such capabilities is related to age. As that requirement is aimed at guaranteeing air traffic safety, it pursues a legitimate objective which may justify a difference in treatment on grounds of age.

However, it is only in very limited circumstances that such a difference in treatment may be justified. In that regard, the Court notes that the international and German authorities consider that, until the age of 65, pilots have the physical capabilities to act as a pilot, even if, between 60 and 65, they may do so only as a member of a crew in which the other pilots are younger than 60. On the other hand, the Lufthansa social partners fixed at 60 the age-limit from which airline pilots are considered as no longer possessing the physical capabilities to carry out their occupational activity.

In those circumstances, the Court states that **the age-limit of 60, imposed by the social partners, to be able to pilot an airplane, constitutes a disproportionate requirement** in light of international and German legislation that fixed that age-limit at 65.

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 European Union 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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