



The exclusion of candidates more than 35 years of age from a competition for the recruitment of police officers required to perform operational duties is compatible with EU law

The possession of particular physical abilities constitutes a genuine and determining occupational requirement for such police officers

Mr Gorka Salaberria Sorondo disputes the lawfulness of a competition notice published by the Academia Vasca de Policía y Emergencias (Basque Police and Emergency Services Academy, Spain) for the recruitment of police officers in the Autonomous Community of the Basque Country. That notice stated that a condition of participation in the competition was that candidates should be under 35 years of age. In the view of M. Salaberria Sorondo, who was more than 35 years old when he participated in the competition, there are no reasonable grounds for the age limit imposed by the notice restricting access to the public service.

Mr Salaberria Sorondo relies in that regard on the directive on equal treatment in employment and occupation,¹ the main objective of which is to combat various types of discrimination. The directive prohibits, inter alia, any direct or indirect discrimination in employment on the ground of age. In 2014 the Court of Justice held in the *Vital Pérez*² case that the directive precludes national legislation setting an upper age limit of 30 years for recruitment as local police officers.

The Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco (High Court of Justice of the Autonomous Community of the Basque Country, Spain) asks the Court whether legislation which provides that candidates for police force posts responsible for performing operational duties must be under 35 years of age is contrary to the directive.

By today's judgment, the Court holds that **the directive does not preclude national legislation that candidates for police force posts responsible for performing operational duties must be under 35 years of age.**

The Court states that the national legislation clearly establishes a difference of treatment based on age, since its effect is that some individuals are treated less favourably than other individuals in comparable situations, on the sole ground that they are 35 years of age or more. However, the Court recalls that, under the directive, **a difference of treatment based on age is not to be regarded as discrimination where a characteristic related to age, such as the possession of particular physical capacities, constitutes a genuine and determining occupational requirement.**

The Court states that the duties relating to protection of people and property, the arrest and guarding of offenders and preventive patrolling may require the use of physical force. The nature of those duties requires a particular physical capability in so far as physical inadequacies in the exercise of those duties may have significant consequences not only for the police officers themselves and third parties but also for the maintenance of public order. It follows that the

¹Council 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).

²Case: [C-416/13](#) Vital Pérez, see also Press Release No [149/14](#).

possession of particular physical capacities in order to be able to perform the essential duties of the police of the Autonomous Community of the Basque Country may be considered to be a genuine and determining occupational requirement for the pursuit of that profession.

As regards the *Vital Pérez* case, the Court explains that **the duties performed by the police forces of the Autonomous Communities in Spain differ from those carried out by the local police**. The Court further states that the rank for which the competition was organised is not involved in administrative tasks, another specific competition, with no age limit, being organised for that type of work.

Moreover, the Court states that, **when the average age of the police force is significantly rising** (as did not apply in the *Vital Pérez* case), **it is essential to plan for the replacement of older police officers by means of the recruitment of younger staff**. A young police officer is able to perform physically demanding tasks more effectively, and it is moreover for that reason that police officers qualify on reaching the age of 56 for certain types of arrangements (reduced annual working time, no requirement to work at night, etc.). Accordingly, with a view to re-establishing a satisfactory age pyramid, the possession of particular physical capacities should be envisaged dynamically, taking into consideration the years of service that can be accomplished by a police officer after he or she has been recruited.

The Court consequently holds that the Spanish legislation may be regarded as being appropriate to the objective of ensuring the operational capacity and proper functioning of the police service of the Autonomous Community of the Basque Country.

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

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