

**Case C-304/21****Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

12 May 2021

**Referring court:**

Consiglio di Stato (Italy)

**Date of the decision to refer:**

23 April 2021

**Appellant:**

VT

**Respondents:**

Ministero dell'Interno

Ministero dell'Interno – Dipartimento della Pubblica Sicurezza –  
Direzione centrale per le risorse umane**Subject matter of the main proceedings**

Annulment or variation, following provisional suspension, of judgment No 2672/2020 of the Tribunale amministrativo regionale per il Lazio, sede di Roma (Regional Administrative Court, Lazio, Rome) (the 'TAR for Lazio'), which dismissed the action brought by VT for annulment of notice No 333-B/12H.27.19 of 2 December 2019 concerning the open competition, based on qualifications and tests, for the allocation of 120 posts of State Police commissioner (the 'notice of 2 December 2019'), and of Decree No 103 of the Ministero dell'Interno (Ministry of the Interior) of 13 July 2018 ('Ministerial Decree No 103/2018'), of the implied decision not to admit VT to that open competition, and of any prior, prearranged, associated or subsequent act.

## **Subject matter and legal basis of the request**

Compatibility of Legislative Decree No 334/2000 with European legislation on the prohibition of discrimination on grounds of age, in particular Directive 2000/78/EC. In laying down the provisions governing the profession of State Police commissioner, that decree introduces an age limit of 30 years, subject to certain exceptions, for participation in the relevant open competition.

Article 267 TFEU

## **Question referred**

Must Council Directive 2000/78/EC of 27 November 2000, Article 3 TEU, Article 10 TFEU and Article 21 of the Charter of Fundamental Rights of the European Union be interpreted as precluding the national legislation contained in Legislative Decree No 334/2000, as subsequently amended and supplemented, and in the secondary sources adopted by the Ministry of the Interior, which lays down an age limit of 30 years for participation in a selection procedure for posts of commissioner in the career bracket of State Police officers?

## **Provisions of EU law cited**

Article 21 of the Charter of Fundamental Rights of the European Union.

Article 3 of the Treaty on European Union.

Article 10 of the Treaty on the Functioning of the European Union.

Presidency conclusions of the Helsinki European Council of 10 and 11 December 1999, paragraph 40 of which states as follows: *'In undertaking labour market reforms, Member States should pay particular attention ... to ... life-long learning and equal opportunities for women and men'*.

Council Directive 2000/78/EC of 27 November 2000 ('Directive 2000/78/EC'); in particular recitals 9, 11, 18, 23 and 25; Article 2; Article 3(1)(a); Article 4(1) and Article 6(1).

## **Provisions of national law cited**

Legislative Decree No 216 of 9 July 2003 ('Legislative Decree No 216/2003'); in particular Article 2, which provides for the concepts of '*discrimination*' and '*direct discrimination*' in the same terms as Article 2 of Directive 2000/78/EC; Article 3(1), which sets out the scope of the legislative decree in the same terms as Directive 2000/78/EC; Article 3, which reproduces in paragraphs 3, 4a and 6 the content of Articles 4 and 6 of Directive 2000/78/EC.

Law No 127 of 15 March 1997; in particular Article 3(6), under which: *'participation in competitions organised by public administrations shall not be subject to age limits, subject to the exceptions laid down in the regulations of individual administrations by reason of the nature of the service or the objective needs of the administration'*.

Legislative Decree No 334 of 5 October 2000 ('Legislative Decree No 334/2000'). In particular Article 1, which sets out the grades which make up the career bracket of State Police commissioner, with managerial development; Article 2(2), which sets out the tasks of the State Police commissioners as follows: *'Persons in the career bracket of officers up to the grade of chief commissioner shall have the grades of public security officer and judicial police officer. In relation to the grades which they hold, they shall perform the duties inherent in institutional tasks of the State Police and the Public Security Administration, with independent decision-making responsibility and corresponding professional input. They shall also provide for the training of employees and perform, in relation to their proficiency, duties relating to education and training of State Police personnel. Those personnel shall work directly with the holders of higher grades in the same career bracket and substitute for them in managing offices and departments in the event of absence or impediment. If they are holders of the relevant office, and when substituting for the director of detached public security offices, chief commissioners shall also perform the functions of a local public security authority. Those personnel shall also carry out, with full responsibility for the directives issued and the results obtained, duties relating to the management of offices and departments not reserved to personnel of higher grades, and duties relating to the direction and coordination of several organisational units in the office to which they are assigned. The above duties shall be identified by decree of the Director-General for Public Security, prioritising the use of vice commissioners and commissioners as persons in charge, as well as in the offices or departments carrying out tasks relating to public order and security and control of territory and those of specialist sections and specialist departments. That decree shall also identify the duties relating to management of offices which are, as a priority, to be assigned to chief commissioners'*; Article 3(1), under which: *'(...) The limit for participation in the competition, of not more than 30 years of age, shall be laid down in the regulation adopted pursuant to Article 3(6) of Law No 127 of 15 May 1997, subject to the exceptions set out therein (...)*'. Also of relevance are Article 3(3), which provides for a physical fitness test as part of the competition in question, a negative result in which may itself result in failure to be selected, and Article 3(4), under which: *'twenty percent of the posts available at the grade of commissioner shall be reserved to State Police personnel who hold the requisite degree with legal content and are not more than 40 years of age (...)*'.

Ministerial Decree No 103/2018; in particular Article 3(1), which lays down a limit of 30 years of age for participation in the open competition for obtaining the grade of State Police commissioner.

Legislative Decree No 165 of 30 April 1997, which, under Articles 1 and 2 thereof, sets at 61 years the age limit beyond which State Police personnel are retired on grounds of age.

Notice of 2 December 2019; in particular Article 3(1)(d), which stipulates, among the general requirements for admission, that the person concerned must *‘have reached the age of 18 and not reached the age of 30’* and which provides, however, that that limit *‘shall be raised, up to a maximum of three years, in relation to the actual military service performed by the applicants’* and that *‘the age limit shall be disregarded in respect of personnel belonging to the State Police force. In respect of those persons who are members of the Civil Administration of the Interior, the age limit for participation in the competition shall be 35’*; Article 10, which exempts from physical fitness tests anyone who is already part of the State Police; Article 11(4), which governs the physical fitness test, a negative result in which may itself result in failure to be selected.

### **Succinct presentation of the facts and procedure in the main proceedings**

- 1 VT, the appellant, attempted, through the relevant electronic procedure, to respond to the notice of 2 December 2019, but was unable to do so because the computer system stated that he did not comply with the maximum age limit of 30 for participation in the competition for State Police commissioner, as laid down in Article 3(1)(d) of that notice, Article 3(1) of Ministerial Decree No 103/2018, and Article 3(1) of Legislative Decree No 334/2000. VT was born in 1988.
- 2 VT brought an action before the TAR for Lazio, was admitted conditionally to the competition, and successfully completed the pre-selection tests. By judgment No 2672/2020, that court dismissed the action brought by VT, taking the view that the age limit laid down in the notice was a reasonable limitation and was thus not contrary to either the Italian Constitution or the European legislation prohibiting discrimination on, inter alia, grounds of age, in particular Directive 2000/78/EC.
- 3 VT appealed against that judgment before the Consiglio di Stato (Council of State).

### **Essential arguments of the parties to the main proceedings**

- 4 Before the Consiglio di Stato VT claims that the Italian legislation laying down the age limit of 30 years in Article 3 of Law No 127 of 15 May 1997 is contrary to Directive 2000/78/EC, Article 21 of the Charter of Fundamental Rights, and Article 10 TFEU. He maintains that that maximum age limit constitutes unreasonable discrimination which is not permitted by those provisions. In that regard, he cites Article 3(1)(d) of the notice of 2 December 2019, which lays down, with alleged further unreasonableness, an upper age limit for certain categories of candidates, and Article 10 of that notice, which exempts from physical fitness tests persons who already belong to the State Police.

- 5 The Ministry of the Interior has contended that the appeal should be dismissed, defending the grounds of judgment No 2672/2020 of the TAR for Lazio.

### **Succinct presentation of the reasons for the request for a preliminary ruling**

- 6 The Consiglio di Stato has doubts as to the compatibility with European legislation of Legislative Decree No 334/2000, Ministerial Decree No 103/2018, and the notice of 2 December 2019, taking the view that the setting of an age limit of 30, such as that at issue in the present case, introduces discrimination on grounds of age, within the meaning of Article 2 of Directive 2000/78/EC, which is not justified under Articles 4 and 6 thereof. This matter is relevant for the purposes of the decision in the main proceedings because, if such incompatibility were to be established, VT could take part in the competition at issue, since Article 3(6) of Law No 127/1997, which does not lay down age limits, subject to the need to pass physical tests, would apply.
- 7 In support of its arguments, the Consiglio di Stato recalls the case-law of the Court of Justice of the European Union on discrimination on grounds of age in relation to recruitment to police forces and military corps responsible for public rescue.
- 8 First of all, the referring court states that it is apparent from the wording of Article 2(2) of Decree No 334/2000 that the duties of a police commissioner are essentially managerial and administrative. No provision is made for executive-type operational duties as essential to this profession which, as such, require particularly significant physical capacities, comparable to those required of an ordinary officer of the Spanish police, as outlined in the judgment of the Court of Justice in Case C-258/15, which the Court of Justice considered in any event compatible with an age limit five years higher than that at issue in this case.
- 9 The Consiglio di Stato then recalls the judgment of the Court of Justice in Case C-416/13, which deemed disproportionate a limit of 30 years for obtaining the grade of ordinary officer in the Spanish local police, whose duties were predominantly administrative but did not absolutely exclude interventions using physical force. Therefore, the referring court states that the 30-year limit *a fortiori* should be regarded as inappropriate in the present case, in which interventions of that type are unrelated to the typical tasks of a State Police commissioner.
- 10 In addition, the Consiglio di Stato cites the judgment of the Court of Justice in Case C-229/08, in which it considered justified, under Article 4(1) of Directive 2000/78/EC, an age limit of 30 for an intermediate career post in the fire service, taking the view that the tasks associated therewith required possession of especially high physical capacities, which were no longer possessed by those over the age of 45.
- 11 In the light of that case-law, the Consiglio di Stato maintains that the 30-year limit in question is disproportionate, also in the light of Article 3(3) and (4) of

Legislative Decree No 334/2000. On the one hand, the referring court states that, in the absence of requirements similar to those highlighted by the judgment in Case C-258/15, the provision for physical fitness tests which, if failed, exclude candidates from the competition must in any event be regarded as sufficient for ensuring the ability to perform the service in the manner required by it. On the other hand, it would appear from a reservation of the grade of commissioner to State Police personnel already in post but of an older age, contained in Article 3(4) of that legislative decree, that an initial age of 40 is not absolutely incompatible with the duties of State Police commissioner.

- 12 Finally, the Consiglio di Stato recalls that the age limit beyond which State personnel of the State Police are retired on grounds of age is 61, in accordance with Articles 1 and 2 of Legislative Decree No 165 of 30 April 1997. In the view of the referring court, that limit on the retirement age ensures an adequate period of service before retirement also for those who start their career after the age of 30.