



**Key Issues:** Social Policy – Equal Treatment – Age Discrimination

**Case:** VT v Ministero dell'Interno

**Reference:** Case C-304/21, CJEU (Seventh Chamber), 17 November 2022

**Legislation:** Directive 2000/78/EC

### **Background**

On 2 December 2019, the Ministry of the Interior (Italy) organised a competition based on qualifications and tests for the allocation of 120 State Police commissioner posts. Among the general conditions for admission to that competition, the call for applications stated that candidates must have reached the age of 18 and not have reached the age of 30, subject to certain special cases.

VT attempted to apply for that competition in accordance with the applicable dematerialised procedure. However, the computer application provided for that purpose prevented him from submitting that application because he did not satisfy the relevant age condition. Having been born in 1988, he had already reached the age of 30 and did not fall within any special case in which such an age limit is raised.

VT therefore brought an action before the Regional Administrative Court, Lazio against the call for applications, and the implied decision not to admit his application to the same competition. By virtue of a provisional measure adopted by that court, VT was admitted to take part in that competition and subsequently passed the pre-selection tests. However, by its judgment of 2 March 2020, that court dismissed VT's action on the ground that the age limit constituted a 'reasonable restriction' and, in that respect, it was not contrary either to the Constitution of the Italian Republic or to the provisions of EU law which prohibit discrimination on grounds of age, in particular Directive 2000/78.

VT brought an appeal against that judgment before the Council of State, Italy claiming that the rules fixing the age limit concerned were contrary to both EU law and the Constitution of the Italian Republic and other provisions of Italian law. The Council of State, Italy decided to stay the proceedings and to refer a question to the Court of Justice (CJEU) for a preliminary ruling on the interpretation of Directive 2000/78.

## **Consideration by CJEU**

At the outset, the CJEU noted that the prohibition of discrimination based on, *inter alia*, age is incorporated in Article 21 of the Charter of Fundamental Rights of the European Union ('the Charter') and that that prohibition was given specific expression by Directive 2000/78 in the field of employment and occupation.

The first question to be determined was whether the legislation at issue in the main proceedings falls within the scope of Directive 2000/78. In that regard, the CJEU noted that legislation, which provides that persons who have reached the age of 30 may not take part in a competition to recruit State Police commissioners, must be regarded as laying down rules relating to access to employment in the public sector within the meaning of Article 3(1)(a) of Directive 2000/78. It follows that the legislation at issue in the main proceedings falls within the scope of Directive 2000/78.

Next, as regards the question of whether the legislation at issue in the main proceedings introduces a difference of treatment on grounds of age within the meaning of Article 2(1) of Directive 2000/78, the CJEU noted that, under that provision, the 'principle of equal treatment' is to mean that there is to be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1 thereof. Article 2(2)(a) of that directive states that, for the purposes of Article 2(1) thereof, direct discrimination is to be taken to occur when a person is treated less favourably than another in a comparable situation, on any of the grounds referred to in Article 1 of that directive.

In the present case, the age condition has the consequence that certain persons are treated less favourably than other persons in comparable situations on the sole ground that they have exceeded the age of 30 years. Therefore, the national legislation at issue in the main proceedings introduces a difference of treatment based directly on age as referred to in Articles 1 and 2(2)(a) of Directive 2000/78, read together. In those circumstances, it should, finally, be determined whether such a difference of treatment may be justified under Article 4(1) or Article 6(1) of Directive 2000/78.

### **The CJEU held that:**

Article 2(2), Article 4(1) and Article 6(1) of Council Directive 2000/78/EC must be interpreted as precluding national legislation which provides for the fixing of a maximum age limit of 30 years for participation in a competition aimed at recruiting police commissioners, in so far as the duties actually performed by those police commissioners do not require particular physical capacities or, if such physical capacities are required, it is apparent that such legislation, while pursuing a legitimate aim, imposes a disproportionate requirement, which it is for the national court to determine.

## **Why is this decision important?**

Employers should, where possible, avoid the use of arbitrary age limits in connection with recruitment or promotion. The grounds for use of an age limit must be justifiable and proportionate to a legitimate aim of the employer.

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