Chapter 14

Jérémy Brottes
Avocat à la Cour, Luxembourg

ABSTRACT
The objective of this chapter is to analyze the regime of the prohibition of discriminations on grounds of age in EU law in the light of the judgments of Wolf, Petersen, and Küçükdeveci. In particular, this chapter demonstrates that EU law in this matter is moving towards a conceptual uniformity due to the fact that the ECJ recognized that the various principles prohibiting discriminations on grounds of age derived from the EU general principle of equality. Such approach allows the ECJ to extend the scope of Directive 2000/78 and to strengthen the legal force of the principle of non-discrimination on grounds of age. These cases also reveal an orientation to a conceptual autonomy of the principle of non-discrimination on grounds of age vis-à-vis the other basis of discrimination that seems inherent to the specificity of discriminations on grounds of age and to the possibilities of exception to the prohibition of discrimination on grounds of age.

DOI: 10.4018/978-1-4666-3637-8.ch014
INTRODUCTION

By the judgments of Wolf (Case C-229/08 Wolf (2010)), Petersen (Case C-341/08 Petersen (2010)), and Kücükdeveci (Case C-555/07 Küçükdeveci (2010)) rendered in the Grand Chamber on January 2010 as part of preliminary rulings, the Court of Justice of the European Union (ECJ) has had the opportunity to clarify the meaning and the scope of the principle of non-discrimination on grounds of age in EU law as implemented by 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).

In Wolf, the Regulation of the Land of Hesse provides that the recruitment to intermediate career posts (to perform tasks assigned to the operational divisions of professional fire services) is open to persons of not more than 30 years of age. This age limit aimed to ensure the well-functioning of professional fire service operations.

In this case, Mr. Wolf applied for an intermediate career post in fire service at the age of 29 to the City of Frankfurt am Main in order to join an operational division. The recruitment date was postponed for several months, so Mr. Wolf was no longer eligible to be a candidate for this job as he had surpassed the age limit in respect to the next recruitment.

Mr. Wolf then claimed compensation to the City, which was refused. This refusal was called by Mr. Wolf in the Verwaltungsgericht Frankfurt am Main, which referred to the ECJ a preliminary question asking whether the German legislation was or was not compatible with 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).

In this case, the Court ruled that Directive 2000/78/EC did not object to the German legislation to the extent where it was justified by objective considerations into scientific and physical requirements particularly ensuring to perform the duties as firefighters on the ground.

In Petersen, a German legal provision which set 68 years as the maximum age for practicing as a panel dentist opened a debate. In this case, Mrs. Petersen filed a complaint against the decision of the District of Westfalen-Lippe’s commission of authorization of dentists, which noted the expiry of her authorization to provide panel dental care. Her claim being rejected, Mrs. Petersen brought an action against that decision in the Sozialgericht Dortmund considering that the decision violated Directive 2000/78/EC as well as the German law of equal treatment. The German Court, while considering that the refusal was valid under the national law which was based on “the need to protect patients insured under the statutory health insurance scheme against the risks presented by older panel dentists whose work is no longer the best” (paragraph 23), preferred however to ask the ECJ a preliminary question regarding the compatibility of German law with EU law including Directive 2000/78/EC.

In this case, the Court ruled that German legislation was incompatible with Directive 2000/78 if the sole objective of such measure was to protect the health of patients against the decline in performance of those dentists after the age of 68, since such age limit was not applicable to non-panel dentists. The Court therefore considered that the difference of treatment based upon the motivation of the decline in performance between panel dentists and non-panel dentists on grounds of age could not be objectively justified.

However, the Court also considered that if the German legislation aimed to share out employment opportunities among generations in the profession of panel dentist, and if such measure took into account the situation of the concerned labour market, the German measure would comply to the Directive, since it would be appropriate and necessary to achieve this objective.

In this context, the Court specified that the task of identifying the objective pursued by German law is assigned to the national court which has to draw the consequences.

The Kücükdeveci case is related to the calculation of the statutory notice period in the context of a dismissal from work. In this case, the German legislation provided that the periods of employ-