

they are able to bear the financial burden of new training (§31-33).

5. Although Member States have a broad discretion in the field of social policy and employment, it does not appear that those that adopt a taxation scheme such as that at issue in the main proceedings go beyond what is necessary to attain the objective of promoting the position of young people on the labour market (§34).

Judgment

1. Article 3(1)(b) of Council Directive 2000/78 must be interpreted as meaning that a taxation scheme, such as that at issue in the main proceedings, which provides that the tax treatment of vocational training costs incurred by a person differs depending on his or her age, comes within the material scope of that Directive to the extent to which the scheme is designed to improve access to training for young people.
2. Article 6(1) of Directive 2000/78 must be interpreted as not precluding a taxation scheme, such as that at issue in the main proceedings, which allows persons who have not yet reached the age of 30 to deduct vocational training costs from their taxable income in full, under certain conditions, whereas the right to deduct is restricted in the case of those who have reached that age, in so far as, first, the scheme is objectively and reasonably justified by a legitimate objective relating to employment and labour market policy and, second, the means of attaining that objective are appropriate and necessary. It is for the national court to determine whether that is the case in the main proceedings.

ECJ 15 November 2016, case C-258/15 (Salaberria Sorondo), Age discrimination

Gorka Salaberria Sorondo – v – Academia Vasca de Policía y Emergencias

Summary

Directive 2000/78 does not preclude requiring candidates for the position of police officer to be under 35 years of age. The ECJ distinguishes from its judgment in *Vital Pérez*.

Facts

Mr Salaberria Sorondo was over 35 years old when he challenged a decision by the Basque Police Academy on the grounds that it violated Directive 2000/78 on age discrimination. The decision required candidates applying for the position of police officer to be under 35.

National proceedings

The Basque court stated that it had previously held an upper age limit of 32 for the recruitment of police officers to comply with both Spanish law and the Directive. That previous judgment had taken the ECJ's 2010 judgment in the *Wolf* case (C-229/08) into consideration. In that case, the ECJ allowed an age limit of 30 for firemen.

The Basque court also noted that it was aware of the ECJ's 2014 judgment in the *Vital Pérez* case (C-416/13). In that judgment, the ECJ held that Directive 2000/78 precludes national legislation that sets the maximum age for recruitment of local police officers at 30 years. The Basque court was not sure whether that judgment, which dealt with an applicant for a position in a Spanish municipal police force, should be applied to the case of Mr Salaberria Sorondo, who applied for a position in the police force of the Autonomous Basque region, which is an 'integrated' police force, having the duty to ensure the preservation of public order and safety.

ECJ's findings

1. Article 4(1) of Directive 2000/78 provides that "a difference of treatment based on a characteristic related to any of the grounds referred to in Article 1 [of that directive] shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate". It is not the ground on which the difference in treatment is based but a characteristic related to that ground which must constitute a genuine and determining occupational requirement. The possession of particular physical capacities is one characteristic relating to age (§32-34).
2. The duties relating to the 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 level of physical capability insofar as physical inadequacies in the exercise of those duties may have significant consequences not only for the police officers

and third parties but also for the maintenance of public order. It follows that the possession of particular physique may be considered to be a genuine and determining occupational requirement for the pursuit of the profession at issue (§34–36).

3. In *Vital Pérez* the ECJ held that the concern to ensure the operational capacity and proper functioning of police forces constitutes a legitimate objective within the meaning of Article 4(1) of the Directive (§39).
4. The duties performed by police officers in the Basque region are more physically demanding than those carried out by municipal police officers. Moreover, the average age of the Basque police force is rising. This requires planning the gradual replacement of older officers by recruiting younger staff, better equipped to take on physically demanding tasks. By contrast, in *Vital Pérez*, it had not been established that the objective of safeguarding the operational capacity and proper functioning of the local police service made it necessary to maintain within it a particular age structure, which would have required the recruitment exclusively of public servants under 30 years of age (§40–45).
5. Additionally, the age at which a police officer of the Autonomous Community of the Basque Country is recruited determines the length of time over which he or she is capable of performing physically demanding work. A police officer recruited at the age of 34, when he will have to undergo training for around two years, will be suitable for assignment to those tasks for a maximum of 19 years, that is, until he reaches 55. The recruitment of older staff jeopardises the possibility of assigning a sufficient number of officers to the most physically demanding tasks. Likewise, older officers could not be assigned for a sufficiently long period to those tasks. Lastly, the rational organisation of the police service of the Autonomous Community of the Basque Country requires that a balance is struck between the number of physically demanding posts, not suitable for older police officers, and the number of posts that are less physically demanding, which can be occupied by older police officers (§46–47).

Judgment

Article 2(2) of Council Directive 2000/78, read together with Article 4(1) of that Directive, must be interpreted as not precluding legislation, such as that at issue in the main proceedings, which provides that candidates for posts as police officers who are to perform all the operational duties incumbent on police officers must be under 35 years of age.

ECJ 17 November 2016, case C-216/15 (Ruhrlandklinik), Temporary agency work

Betriebsrat der Ruhrlandklinik gGmbH – v –
Ruhrlandklinik gGmbH

Summary

The definition of ‘worker’ in Directive 2008/104 on temporary agency work includes those who are similar to employees, without having employee status under domestic law.

Facts

This case concerns the interpretation of Directive 2009/104 on temporary agency work. It applies to, on the one hand, ‘workers’ employed by a temporary work agency and, on the other hand, “undertakings which are temporary-work agencies or user undertakings engaged in economic activities whether or not they are operating for gain”. The German Law on the supply of temporary staff provides that the assignment of agency workers to a user undertaking shall be of a temporary nature.

In 2010, Ruhrlandklinik (the ‘clinic’) concluded an agreement with a non-profit association affiliated to the German Red Cross (the ‘association’). Under this agreement, the association undertook to supply nursing staff to the clinic at cost price plus 3%. The nursing staff in question consisted entirely of members of the association. Although those members had to follow the association’s instructions and were paid for their work by the association, German law does not consider them to have the status of employee. The legal basis of their obligation to work for the association lies in their membership. Management of the clinic requested its works council to consent to the secondment of Ms K to the clinic, a member of the association. The works council withheld consent on the grounds that Ms K’s secondment was not designed to be temporary. The clinic took the view that the law on the supply of temporary staff did not apply to members of an association who are not employees. It applied to the local court for authorisation of the secondment of Ms K for an indefinite period.

National proceedings

The courts of first and second instance granted the clinic’s application. The works council appealed to the *Bun-*