



6.5.2019

NOTICE TO MEMBERS

Subject: Petition No 0803/2018 by A. C. (Italian) on discrimination against Italian coach drivers, compared to coach drivers in other European countries

1. Summary of petition

The petitioner, a driver of tourist coaches since 1970, complains of discrimination against Italian coach drivers, compared to coach drivers in other European countries. He claims that when Italian coach drivers reach 68 years of age, their driving licence is downgraded from category D to E, whilst in other European countries it is downgraded from the age of 70. He therefore calls on the Parliament to put an end to this discriminatory treatment.

2. Admissibility

Declared admissible on 11 December 2018. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 6 May 2019

1. The prohibition of discrimination on grounds of age is a general principle of EU law, enshrined in Article 21 of the EU Charter of Fundamental Rights, and given specific expression by Council Directive 2000/78/EC¹ (the ‘Directive’) The latter prohibits discrimination based, among other things, on age in employment and occupation.

However, a difference of treatment based on age is not necessarily incompatible with EU law. In particular, Article 2(5) of the Directive allows Member States to adopt, by national law, measures which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of

¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, *OJL 303, 2.12.2000, p. 16–22.*

health and for the protection of the rights and freedoms of others. In addition, Article 4(1) of the Directive specifies that a difference in treatment based on age shall not constitute discrimination where such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate. Furthermore, Article 6(1) of the Directive provides that differences in treatment on grounds of age do not constitute age discrimination if they are objectively and reasonably justified by a legitimate aim, including employment policy and labour market objectives, and if the means of achieving that aim are appropriate and necessary.

2 The Court of Justice of the European Union (the ‘Court’) has interpreted the aforementioned provisions in a number of judgements concerning in particular maximum ages for practicing specific professions².

The Court ruled that Articles 2(5) and 4(1) of the Directive must be interpreted strictly since they establish an exception/ derogation from the principle of non-discrimination³. In assessing whether there was discrimination in the particular cases brought before the Court, it examined in particular the objectives sought by the national laws at issue taking into account the tasks of the workers concerned which were sometimes physically demanding, the question whether the required high physical capacities diminished with age and the question whether the fixed age limit was appropriate and necessary to increase safety and protection while minimising the risk of failures due to human error.

The Court held that, in certain situations where there are scientific uncertainties, the legislators have the discretion to decide to give priority to measures guaranteeing with certainty a high level of safety such as an age limit for practicing a specific profession, instead of providing for individual examinations of the physical (and/or mental capacity) of the persons concerned (e.g. in connection with a licence to exercise a specific profession)⁴.

In connection with the Member States’ discretion to set age limits, the Court held that the level of protection may vary from one Member State to another⁵.

Furthermore, the Court proceeded to a balance of the rights and interests involved including the requirements of safety, the non-discrimination principle and the right to engage in work and pursue a chosen occupation⁶.

The Court took also into consideration the level of the age limit at issue, i.e. whether it may be regarded as sufficiently high to serve as the endpoint for authorisation to practise a certain

² In particular, airplane pilots (age 60/65) and panel dentists (age 68). See respectively ECJ judgment of 13.09.2011 in case C-447/09, *Prigge*; ECJ judgment of 5.7.2017 in case C-190/16, *Fries*; ECJ judgment of 12.1.2010 in case C-341/08, *Petersen*.

³ See, in this regard, among others, ECJ judgment in the *Prigge* case.

⁴ See, in this regard, ECJ judgment in the *Fries* case (paragraphs 59-65) which concerned, however, an EU act rather than a national law.

⁵ See, in this regard, ECJ judgment of 12.1.2010 in the *Petersen* case C-341/08 (paragraphs 51-52).

⁶ See, in this regard, among others, ECJ judgment in the *Fries* case.

profession⁷.

3 The third EU Driving Licence Directive, namely Council Directive 2006/126/EC, harmonises to a certain extent the rules on driving licences in the EU, but does not provide for a maximum age for the validity of driving licences. It is therefore for the Member States to determine such age limit, if they consider it appropriate, with due respect of the EU anti-discrimination legislation.

4 In light of the above, taking into consideration the guidelines provided by the Court of Justice of the European Union in its aforementioned case-law, the Commission is of the opinion that it is not unreasonable for a Member State to set an age limit at 68 years for coach drivers having a category D driving licence, as it appears to be the case in Italy. Such a requirement appears justified for reasons of road safety and does not seem incompatible with EU law, in particular Council Directive 2000/78/EC. The alleged difference in treatment of coach drivers between different Member States depending on their age does not lead to another conclusion, since the level of protection, and hence the age limit, may vary from one Member State to another.

Conclusion

As EU law currently stands, a Member State has discretion to set an age limit of 68 years of age for granting a driving licence to coach drivers, with a view to ensuring road safety. Such an age limit may differ from one Member State to another, since the level of protection may vary in different countries.

⁷ See, in this regard, ECJ judgments in the *Petersen* case and *Fries* case (68 years of age for panel dentists and 65 for airplane pilots respectively).