Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

6 November 2012*

(Failure of a Member State to fulfil obligations — Social policy — Equal treatment in employment and occupation — Directive 2000/78/EC — Articles 2 and 6(1) — National scheme requiring compulsory retirement of judges, prosecutors and notaries on reaching the age of 62 — Legitimate objectives justifying a difference in treatment vis-à-vis workers under the age of 62 — Proportionality of the duration of the transitional period)

In Case C-286/12,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 7 June 2012,

European Commission, represented by J. Enegren and K. Talabér-Ritz, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Hungary, represented by M.Z. Fehér, acting as Agent,

defendant,

THE COURT (First Chamber),

composed of A. Tizzano (Rapporteur), President of the Chamber, A. Borg Barthet, M. Ilešič, E. Levits and J.-J. Kasel, Judges,

Advocate General: J. Kokott,

Registrar: A. Impellizzeri, Administrator,

having regard to the order of the President of the Court of Justice of 13 July 2012 deciding to apply to the present case the expedited procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and Article 133 of the Rules of Procedure of the Court of Justice,

having regard to the written procedure and further to the hearing on 1 October 2012,

after hearing the Advocate General,

gives the following

* Language of the case: Hungarian.

Judgment

1 By its application, the European Commission seeks a declaration from the Court that, by adopting a national scheme requiring the compulsory retirement of judges, prosecutors and notaries on reaching the age of 62 – which gives rise to a difference in treatment on grounds of age which is not justified by legitimate objectives and which, in any event, is not appropriate or necessary as regards the objectives pursued – Hungary has failed to fulfil its obligations under Articles 2 and 6(1) of 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).

Legal context

European Union law

2 Article 1 of Directive 2000/78 provides:

'The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.'

3 Article 2(1) and (2) of the directive provides:

'1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or

…'

4 Article 6(1) of Directive 2000/78 reads as follows:

'Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;

…'.

Hungarian law

5 Until 31 December 2011, Article 57(2) of Law No LXVII of 1997 on the legal status and remuneration of judges essentially allowed judges to remain in office until the age of 70.

6 The new Basic Law, which was adopted on 25 April 2011 and entered into force on 1 January 2012 ('the Basic Law'), provides, in Article 26(2) thereof, that 'with the exception of the President of the Kúria, judges may remain in office until the general retirement age'.

7 In that regard, Article 12(1) of the transitional provisions of the Basic Law ('the transitional provisions') provides:

'If a judge reaches the general age of eligibility for a retirement pension referred to in Article 26(2) of the Basic Law before 1 January 2012, he shall retire on 30 June 2012. If he reaches the general age of eligibility for a retirement pension referred to in Article 26(2) of the Basic Law between 1 January 2012 and 31 December 2012, he shall retire on 31 December 2012'.

8 Similarly, in respect of prosecutors, under Article 29(3) of the Basic Law, 'with the exception of the Prosecutor General, prosecutors may remain in office until the general retirement age'.

9 In that regard, Article 13 of the transitional provisions provides:

'If a prosecutor reaches the general age of eligibility for a retirement pension referred to in Article 29(3) of the Basic Law before 1 January 2012, he shall retire on 30 June 2012. If he reaches the general age of eligibility for a retirement pension referred to in Article 29(3) of the Basic Law between 1 January 2012 and 31 December 2012, he shall retire on 31 December 2012'.

10 Thus, firstly, within the meaning of Article 90(ha) of Law No CLXII of 2011 on the legal status and remuneration of judges ('the Law of 2011 on judges'), which came into force on 1 January 2012, a judge must retire if he 'has reached the age-limit for retirement applicable to him … with the exception of the President of the Kúria'.

11 Secondly, in accordance with Article 34(d) of Law No CLXIV of 2011 on the careers of prosecutors and the legal status of the Prosecutor General, prosecutors and other procuratorial officials, 'a prosecutor shall cease to perform the duties of his office when he reaches the age-limit for retirement applicable to him'.

12 In addition, Article 45(4) of Law No CCI of 2011 amending certain laws in accordance with the Basic Law amended, with effect from 1 January 2014, Article 22(d) of Law No XLI of 1991 on notaries. The new version of that article provides that '[n]otaries shall cease to perform the duties of their office on the date on which they reach the age-limit for retirement applicable to them'.

13 In the version in force until 31 December 2009, Article 18(1) of Law No LXXXI of 1997 on social insurance benefits relating to pensions ('the Tny Law') provided:

'Any person who has completed at least 20 years service shall be entitled, from the age of 62, to the statutory retirement pension'.

14 In the version in force from 1 January 2010, that provision is now worded as follows:

'The pensionable age for the statutory retirement pension shall be as follows:

(a) 62 years for all persons born before 1 January 1952,

(b) 62 years plus 183 days for all persons born in 1952,

(c) 63 years for all persons born in 1953,

(d) 63 years plus 183 days for all persons born in 1954,

(e) 64 years for all persons born in 1955,

(f) 64 years plus 183 days for all persons born in 1956,

(g) 65 years for all persons born in 1957 or thereafter'.

15 Pursuant to Article 18(2) of the Tny Law, any person who has:

'(a) reached the age-limit for retirement, as defined in paragraph 1 above, corresponding to his year of birth …, and has

(b) performed the duties of his office for at least 20 years, and

…'

is to be entitled to a pension at the full rate.

16 Finally, under Article 230 of the Law of 2011 on judges, of the judges who reach the newly-fixed age of compulsory retirement before 1 January 2013, those judges who reach the age of 62 before 1 January 2012 are required to retire on 30 June 2012, while those who reach the age of 62 between 1 January and 31 December 2012 are required to retire on 31 December 2012.

17 Similarly, Article 160 of Law No CLXIV of 2011 on the careers of prosecutors and on the legal status of the Prosecutor General, prosecutors and other procuratorial officials includes provisions which are essentially similar to those prescribed for judges. In respect of notaries, a scheme analogous to that for judges and prosecutors will be applied to them from 1 January 2014, as mentioned in paragraph 12 of the present judgment.

The pre-litigation procedure and the proceedings before the Court

18 On 17 January 2012, the Commission sent a letter of formal notice to Hungary in which it set out its view that, by adopting national legislative provisions relating to the age-limit for compulsory retirement of judges, prosecutors and notaries, that Member State had failed to fulfil its obligations under Directive 2000/78. In its response of 17 February 2012, Hungary disputed the failure alleged against it.

On 7 March 2012, the Commission issued a reasoned opinion requesting Hungary to take the measures necessary to comply with its obligations within one month of receipt thereof. Hungary replied by letter dated 30 March 2012.

19 Taking the view that that response was unsatisfactory, the Commission brought the present action on 7 June 2012.

20 By a separate document lodged at the Registry of the Court of Justice on the same day, the Commission submitted a request for the application of the accelerated procedure referred to in Article 23a of the Statute of the Court of Justice of the European Union, which was granted by the President of the Court by order of 13 July 2012.

21 On 16 July 2012, the Alkotmánybíróság (Hungarian Constitutional Court) decided to repeal, with retroactive effect, part of the Hungarian legislation criticised by the Commission. In response to a request of the Court Registry, the Commission, on 25 July 2012, stated its position on that decision and maintained both its action and its request for the application of the accelerated procedure. Hungary accordingly lodged its defence on 14 August 2012, in which it also stated its position on the consequences of that decision for the present case.

The action

Arguments of the parties

22 The Commission claims that the contested provisions are contrary to Articles 2 and 6(1) of Directive 2000/78 in that they give rise to unjustified discrimination and, in any event, are neither appropriate nor necessary to achieve the allegedly legitimate objectives invoked by Hungary.

23 As a preliminary point, Hungary claims that the present case has lost part of its purpose in so far as, in its judgment of 16 July 2012, the Alkotmánybíróság repealed, with retroactive effect, Articles 90(ha) and 230 of the Law of 2011 on judges. Consequently, according to Hungary, there is no longer any need to adjudicate on the corresponding part of the action. The Commission, by contrast, takes the view that that judgment does not affect the present action.

Discrimination

24 According to the Commission, the Hungarian legislation at issue infringes Article 2 of Directive 2000/78 in that it gives rise to age-based discrimination between, on the one hand, judges, prosecutors and notaries who have reached the age-limit for retirement fixed by that legislation and, on the other hand, those persons who may continue to work. The lowering of the age-limit for compulsory retirement applicable to judges, prosecutors and notaries from 70 to 62 gives rise to a difference in treatment based on age between persons within a given profession. While recognising that Hungary is free to set the age of retirement for those persons, the Commission argues that the new scheme profoundly affects the duration of the working relationship between the parties as well as, more generally, the exercise by the persons concerned of their professional activity, by preventing their future participation in working life. The Commission states in that regard that the fact that, in the past, the persons concerned were subject to a more favourable scheme than that applicable to other public sector employees does not preclude that legislation from being discriminatory.

25 Hungary, in reply, contends that there is no discrimination in the present case. According to Hungary, the Commission assessed the legislation at issue in isolation only, without taking the general context of that legislation into account. It argues, in particular, that the lowering of the age-limit for the compulsory retirement of persons within the occupational categories concerned is aimed at redressing

positive discrimination in favour of those persons, in so far as only those persons, in contrast to other public sector employees, could not only continue to work until the age of 70 but could also, in several cases, combine their salary with the retirement pension to which they were entitled from the time at which they reached retirement age. Thus, the reform is designed to strike a balance within general labour legislation.

Justification of discrimination

26 The Commission contends that the alleged difference in treatment is not justified under the conditions laid down by Article 6(1) of Directive 2000/78. According to the Commission, the national legislation does not pursue any legitimate aim and, in any event, is not proportionate. Compliance with those conditions, however, is necessary not only in respect of the fixing of an age-limit for compulsory retirement but also as regards the changes to that age-limit.

27 As regards the existence of a 'legitimate aim' within the meaning of that provision, the Commission claims that, according to the case-law of the Court, only social-policy objectives, such as those relating to employment policy, the labour market or vocational training, are capable of justifying a derogation from the principle prohibiting discrimination on grounds of age. However, firstly, no such objective is identifiable in the legislation at issue or is even capable of being inferred from the general context of that legislation. Such a failing is in itself contrary to Directive 2000/78 in so far as it prevents any judicial scrutiny of the legality and the proportionality of that legislation.

28 Secondly, the Commission points out that, during the administrative stage, Hungary invoked, essentially, two objectives ostensibly pursued by the legislation at issue, that is to say, primarily, the standardisation of the rules relating to retirement for all persons and, secondarily, the facilitation of the entry of young lawyers into the judicial system with a view to establishing a 'balanced age structure'.

29 However, the Commission is of the opinion that the first of those objectives cannot be regarded as 'legitimate' within the terms of Article 6(1) of Directive 2000/78, as the Court has excluded the possibility that organisational objectives may be capable of justifying discrimination. In response to Hungary's argument that the Court, by its judgment of 21 July 2011 in Joined Cases C-159/10 and C-160/10 *Fuchs and Köhler* [2011] ECR I-6919, adopted a contrary position, namely that such objectives are legitimate, the Commission maintains that that judgment is not applicable to the present case. In that judgment, the Commission argues, the Court did not extend the definition of 'legitimate aim' within the meaning of that provision, but held that the objective of establishing a 'balanced age structure' between young officials and older officials could constitute a 'legitimate aim' of employment and labour market policy. Irrespective of the fact that that 'legitimate aim' may have 'organisational' consequences, in particular in terms of the improved efficiency of the public justice service, those consequences cannot be regarded, in themselves, as 'legitimate aims'.

30 As regards the second objective, the Commission points out that the argument concerning the replacement of older judges by younger judges and the improvement of the efficiency of the public justice service assumed to result therefrom is not only a 'pure and simple generalisation', rejected by the Court in *Fuchs and Köhler*, but also a form of prejudice based on age. Directive 2000/78, however, precisely seeks to protect individuals against such prejudices.

31 As regards the justification of the restriction, Hungary claims that the fact that the rules at issue, which concern judges as well as prosecutors and notaries, were adopted and entered into force at the same time reveals in clear terms the legislature's intention to unify, in those sectors, the rules on the age-limit for compulsory retirement in order to establish a 'more balanced age structure' within the professions concerned. Hungary, furthermore, submits that those aims are 'legitimate' within the meaning of Article 6(1) of that directive, as the Commission itself has recognised.

The appropriateness of, and the need for, the national provisions at issue

32 As regards the two objectives invoked by Hungary and purported to be envisaged by the contested national provisions, the Commission considers that, even if they were to be regarded as 'legitimate aims' for the purposes of Article 6(1) of Directive 2000/78, those provisions are not appropriate to achieve those objectives.

33 First, those provisions cannot contribute to the achievement of the objective of standardising the age of retirement, given, in particular, that, firstly, the service relationship of judges and prosecutors will end when they reach retirement age, whereas the employment relationship of other public sector employees will end only when those employees have reached that age and they have completed the years of service necessary for the purpose of obtaining a full retirement pension. Next, according to the Commission, there are still exceptions, such as those concerning the President of the Kúria, the Prosecutor General, the constitutional judges or prosecutors and deputy and trainee prosecutors. Finally, the judges, prosecutors and notaries do not have the option – unlike other professional groups within the public sector – to request to continue to work 'in the interest of the service' after they have reached retirement age.

34 Secondly, as regards the objective of facilitating the employment of young professionals in the public justice service, the Commission is of the opinion that the rules for implementing the provisions at issue suggest that they were not conceived in such a way as to attain the objective referred to. Furthermore, they did not make it possible to transfer experience from the older officials to the younger lawyers entering the professions concerned. A more coherent and sustainable manner by which to attain the desired objective would have been to lower the age-limit for compulsory retirement progressively.

35 In that regard, Hungary contends that, in reality, as a result of such provisions and the parallel appointment opportunities for younger lawyers, a large number of senior positions are accessible to the 'middle-aged' generation in the courts and the public prosecutor's office. Although older judges, prosecutors and notaries are obliged to retire, many among them will remain in place. However, their presence and the possibility for them to access senior posts guarantee that they will transfer the experience that they have acquired to their younger colleagues.

36 The Commission also takes the view that, in the light of the serious consequences that such a change is liable to have for the judges, prosecutors and notaries concerned, such a rapid and radical lowering of the age-limit for compulsory retirement goes beyond what is necessary in order to attain the stated objectives. Those judges, prosecutors and notaries will be obliged to retire quickly and without having had the time to take measures, in particular of a financial nature, to deal with the reduction in their income.

37 By contrast, Hungary is of the opinion that the transitional periods concerning the interested parties were known not only during the adoption of the contested legislation, but as early as 20 June 2011, when the Hungarian Parliament adopted Law No LXXII of 2011 amending certain laws on legal status in accordance with the Basic Law. Article 10(1) of Law No LXXII of 2011 already included the 'notice periods which would be later transposed in the Law of 2011 on judges and in the transitory provisions'. In such circumstances, the interested parties could have taken note of the transitional periods provided for in the contested legislation from June 2011. Hungary adds that, in the case of notaries, the rules lowering the age-limit for compulsory retirement will not enter into force until 1 January 2014, with the result that they have even more preparation time.

The consistency of the scheme

38 The Commission points out that there is no consistency between the contested legislation and the Hungarian reform of the general pension scheme. It states that 'in 2012, the service relationship of judges, prosecutors and notaries aged 62 to 70 will compulsorily end', while 'between 2014 and 2022, the general retirement age and, therefore, [the age-limit for compulsory retirement] also applicable to judges, prosecutors and notaries will be progressively increased from 62 to 65'. Thus, the combination of those two reforms will lead to an extremely unbalanced situation concerning the recruitment and promotion of young lawyers, in so far as, during 2012 and 2013, it may be expected that the State will carry out extensive recruitment for persons to fill vacant posts while, from 2014 – by reason of the raising of the age-limit for compulsory retirement – that recruitment process will have to slow down significantly.

39 According to Hungary, the lack of consistency complained of by the Commission is merely apparent. A raising of the age-limit for compulsory retirement can be observed in nearly all of the Member States, a fact which does not call the internal logic of the contested legislation into question. That legislation specifically binds that age-limit for the professions concerned to the pensionable age, in order that the age fixed corresponds to the economic and demographic developments that the pension system and employment policy are, by necessity, bound to follow. The policy pursued by Member States with regard to pensions is therefore based on the premise that the age-limit for compulsory retirement and the age at which persons become entitled to receive the retirement pension must always evolve together, in such a way that the optimal attainment of the employment policy aims contemplated may be safeguarded.

Findings of the Court

The subject-matter of the action

40 It is necessary to examine, at the outset, the argument put forward by Hungary that there is no longer any need to adjudicate on part of the action, in so far as that part had become devoid of purpose as a result of the judgment of the Alkotmánybíróság.

41 It must be recalled, in that regard, as is apparent from settled case-law, that the question whether there has been a failure to fulfil obligations must be examined on the basis of the position in which the Member State at issue found itself at the end of the period laid down in the reasoned opinion, and the Court cannot take account of any subsequent changes (see, inter alia, judgment in Case C-209/02 *Commission* v *Austria* [2004] ECR I-1211, paragraph 16, and judgment of 19 July 2012 in Case C-565/10 *Commission* v *Italy*, paragraph 22).

42 In the present case, it is common ground that, at the end of the period laid down by the Commission in its reasoned opinion, the national provisions at issue were in force. Furthermore, as Hungary itself acknowledged during the hearing, the competent national authorities adopted, on the basis of those provisions, individual administrative measures designed to end the employment relationships of the persons concerned.

43 On 16 July 2012, that is, after that period had expired on 7 April 2012, the Alkotmánybíróság delivered the judgment in which it repealed Articles 90(ha) and 230 of the Law of 2011 on judges.

44 According to Hungary, since that judgment retroactively repealed Articles 90(ha) and 230 thereof, those articles can no longer be considered to have been in force at the time when the period laid down in the reasoned opinion expired.

45 It is important to note in that regard, however, that, in accordance with the case-law referred to in paragraph 41 of the present judgment, the date which must be used by the Court for the purpose of determining whether Hungary was in breach of its obligations is 7 April 2012. The retroactive nature of the Alkotmánybíróság's judgment cannot therefore render the present action devoid of purpose since the repeal of Articles 90(ha) and 230 of the Law of 2011 on judges results from an event which took place after that date and which, for that reason, cannot be taken into account.

46 In any event, it must be noted that, firstly, that judgment has had no effect as regards the transitional provisions which set out rules analogous to those contained in Articles 90(ha) and 230 of the Law of 2011 on judges. Secondly, since the repeal of those provisions did not directly affect the validity of those individual measures by which the employment relationships of the persons concerned were brought to an end, those persons are not automatically reinstated. On the contrary, in order to be reinstated, those persons are obliged to bring proceedings for the annulment of those measures, and the outcome of such proceedings, as was confirmed during the hearing by Hungary itself, is not certain.

47 It is consequently necessary to adjudicate on the action in its entirety.

Substance of the action

48 In order to determine whether the Commission's complaint against Hungary is well founded, it should be recalled that, under Article 2(1) of Directive 2000/78, 'the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination on any of the grounds referred to in Article 1' of that directive. Article 2(2)(a) of that directive states that, for the purposes of the application of Article 2(1), direct discrimination is to be taken to occur where one person is treated less favourably than another in a comparable situation, on any of the grounds referred to in Article 1 of that directive (Case C-447/09 *Prigge and Others* [2011] ECR I-8003, paragraph 42).

49 In the present case, it is not contested that the disputed national provisions provide that the judges, prosecutors and notaries concerned are required automatically to cease their functions when they reach the age of 62.

50 Individuals engaged in those professions and who have reached the age of 62 are in a comparable situation to that of younger individuals who are engaged in the same professions. However, the former, due to their age, are required automatically to cease their functions (see, by analogy, *Fuchs and Köhler*, paragraph 34, and *Prigge and Others*, paragraph 44).

51 The disputed national measures, pursuant to which the fact that a worker has reached the retirement age laid down by that legislation leads to automatic termination of his employment contract, must be regarded as directly imposing less favourable treatment of workers who have reached that age as compared with all other persons in the labour force. Such legislation therefore establishes a difference in treatment directly based on age, as referred to in Article 2(1) and (2)(a) of Directive 2000/78 (see, to that effect, Case C-411/05 *Palacios de la Villa* [2007] ECR I-8531, paragraph 51).

52 Hungary claims, in that respect, that, in reality, those provisions lowered the age-limit for compulsory retirement in order to redress a situation of positive discrimination in favour of judges, prosecutors and notaries under the scheme previously in force, in so far as they, unlike other public sector employees, could remain in their posts until the age of 70.

53 Such a fact is not, however, capable of calling into question the existence of a difference in treatment between persons compulsorily obliged to retire because they have reached the age of 62 and those who, having not yet reached that age, may remain in their post. The difference in treatment on grounds of age is based on the very existence of an age-limit above which the persons concerned must retire, regardless of the age fixed for that limit and, *a fortiori*, for the previously applicable limit.

54 It must, therefore, be held that the provisions at issue in the main proceedings give rise to a difference in treatment based directly on age within the meaning of Article 1 of Directive 2000/78, in conjunction with Article 2(2)(a) thereof.

55 It follows, however, from the first subparagraph of Article 6(1) of Directive 2000/78 that a difference in treatment based on age does not constitute discrimination if, within the context of national law, it is objectively and reasonably justified by a legitimate aim and where the means of achieving that aim are appropriate and necessary (*Prigge and Others*, paragraph 77, and judgment of 5 July 2012 in Case C-141/11 *Hörnfeldt*, paragraph 21).

56 It is, therefore, necessary to establish whether the contested provisions are justified by a legitimate aim and whether the means employed to achieve that aim are appropriate and necessary, thereby complying with the principle of proportionality.

57 As regards, firstly, the aims pursued by those provisions, it must be observed from the outset that the fact invoked by the Commission that no specific objective is expressly set out in those provisions is not decisive.

58 It cannot be inferred from Article 6(1) of Directive 2000/78 that a lack of precision in the national legislation at issue as regards the aim pursued has the effect of automatically excluding the possibility that that national legislation may be justified under that provision. In the absence of such precision, it is important that other elements, derived from the general context of the measure concerned, should make it possible to identify the underlying aim of that measure for the purposes of review by the courts as to its legitimacy and as to whether the means put in place to achieve that aim are appropriate and necessary (*Fuchs and Köhler*, paragraph 39, and *Hörnfeldt*, paragraph 24).

59 It is therefore necessary to examine the arguments put forward by Hungary in the pre-litigation procedure, as well as in its written submissions and at the hearing, to the effect that the provisions at issue seek to attain, in essence, two objectives, namely, first, the standardisation, in the context of professions in the public sector, of the age-limit for compulsory retirement, while ensuring the viability of the pension scheme, a high level of employment and the improvement of the quality and efficiency of the activities involved in the administration of justice and, secondly, the establishment of a 'more balanced age structure' facilitating access for young lawyers to the professions of judge, prosecutor and notary and guaranteeing them an accelerated career.

60 Secondly, as regards the legitimacy of those objectives, it must be noted that the Court has already held that the aims that may be considered 'legitimate' within the meaning of the first subparagraph of Article 6(1) of Directive 2000/78 and, consequently, appropriate for the purposes of justifying a derogation from the principle prohibiting discrimination on grounds of age are social policy objectives, such as those related to employment policy, the labour market or vocational training (Case C-388/07 *Age Concern England* [2009] ECR I-1569, paragraph 46; C-88/08 *Hütter* [2009] ECR I-5325, paragraph 41, and *Prigge and Others*, paragraph 81).

61 As regards the aim of standardisation, in the context of professions in the public sector, it must be noted, as the Advocate General noted in point 63 of her View, that, in so far as such an aim ensures observance of the principle of equal treatment for all persons in a specific sector and relates to an essential element of their employment relationship, such as the time of retirement, that aim can constitute a legitimate employment policy objective.

62 As regards the aim of establishing a more balanced age structure facilitating access for young lawyers to the professions of judge, prosecutor and notary, suffice it to state that the Court has already had the opportunity to find that the aim of establishing an age structure that balances young and older civil servants in order to encourage the recruitment and promotion of young people, to improve personnel management and thereby to prevent possible disputes concerning employees' fitness to work beyond a certain age, while at the same time seeking to provide a high-quality justice service, can constitute a legitimate aim of employment and labour market policy (*Fuchs and Köhler*, paragraph 50).

63 While it is clear from the foregoing that the contested provisions are justified by legitimate aims, it is still necessary, finally, to establish whether the national provisions at issue are an appropriate and necessary means of achieving those two aims.

64 As regards the first aim, those provisions are, in principle, an appropriate means of achieving the aim of standardisation pursued by Hungary, in that they are designed precisely, if not to eliminate, at least to reduce significantly the diversity of the age-limits for compulsory retirement for all the professions attached to the public justice service.

65 It still remains, however, to establish whether those provisions also constitute a necessary means to those ends.

66 In order to examine whether the provisions at issue go beyond what is necessary for achieving that objective and unduly prejudice the interests of the persons concerned, those provisions must be viewed against their legislative background and account must be taken both of the hardship they may cause to the persons concerned and of the benefits derived from them by society in general and the individuals who make up society (Case C-45/09 *Rosenbladt* [2010] ECR I-9391, paragraph 73).

67 It should be observed, in this regard, that the categories of persons concerned by those provisions benefited, until their entry into force, from a derogation allowing them to remain in office until the age of 70, which gave rise, in those persons, to a well-founded expectation that they would be able to remain in office until that age.

68 However, the provisions at issue abruptly and significantly lowered the age-limit for compulsory retirement, without introducing transitional measures of such a kind as to protect the legitimate expectations of the persons concerned.

69 Thus, by the legislation at issue, which entered into force only on 1 January 2012, firstly, all judges and prosecutors who had reached the age of 62 before that date are obliged to retire on 30 June 2012, that is to say, after a period of six months, and those who reach that age between 1 January and 31 December 2012 are required to retire on 31 December 2012, that is to say, after a period which in no case will be greater than one year and which, in the majority of cases, will be less than one year. Secondly, notaries who reach the age of 62 before 1 January 2014 will be required to retire on that date, that is to say, two years after the entry into force of the new retirement scheme at the latest.

70 In those circumstances, the persons concerned are obliged to leave the labour market automatically and definitively without having had the time to take the measures, in particular measures of an economic and financial nature, that such a situation calls for, in light of the fact that, firstly, their retirement pension will be, as was stated during the hearing, at least 30% lower than their remuneration and, secondly, the cessation of functions does not take into account contribution periods, which does not therefore guarantee the right to a pension at the full rate.

71 It must be stated that Hungary has failed to provide any evidence to enable it to be established that more lenient provisions would not have made it possible to achieve the objective at issue.

72 It is true that that Member State maintained that the persons concerned were in a position to anticipate, from 2011, the changes to the scheme governing their retirement, given that Article 10(1) of Law No LXXII of 2011 amending certain laws on legal status in accordance with the Basic Law already included the 'notice periods', which would later also be transposed in the Law of 2011 on judges and in the transitional provisions. However, even supposing that those notice periods might have sufficed to avoid all prejudice to the persons concerned, it is necessary to point out that Hungary has in no way explained that the contested legislation enabled the judges, prosecutors and notaries to anticipate with a sufficient degree of certainty the amendments to their retirement scheme contemplated and to take the necessary measures.

73 Furthermore, Hungary also did not indicate the reasons why, on the one hand, it lowered the age of retirement by eight years without providing for a gradual staggering of that amendment, while, on the other hand, the Tny Law not only provided that the increase of three years to the age of retirement, that is to say, from 62 to 65, would be introduced from 2014 over a period of eight years, but had also entered into force on 1 January 2010, that is to say, four years before it becomes applicable.

74 However, as the Advocate General notes at point 66 of her View, those differences between the contested provisions and the Tny Law suggest that the interests of those who are affected by the lowering of the age-limit for retirement were not taken into account in the same way as those of other public sector employees for whom the age-limit has been raised.

75 In the light of the foregoing, it must be concluded that the provisions at issue are not necessary to achieve the objective of standardisation invoked by Hungary.

76 As regards the second objective purporting to establish a more balanced age structure facilitating access for young lawyers to the professions of judge, prosecutor and notary and guaranteeing them an accelerated career, it must be held that, as noted by Hungary, the lowering of the age-limit for compulsory retirement will result in the vacation of numerous posts which will be liable to be occupied by young lawyers, as well as in the acceleration of the rotation and renewal of the personnel within the professions concerned.

77 However, such apparently positive short-term effects are liable to call into question the possibility of achieving a truly balanced age structure in the medium and long terms.

78 While, in 2012, the turnover of personnel in the professions concerned will be subject to a very significant acceleration due to the fact that eight age groups will be replaced by one single age group, namely that of 2012, that turnover rate will be subject to an equally radical slowing-down in 2013 when only one age group will have to be replaced. In addition, that rate of turnover will slow down progressively as the age-limit for compulsory retirement is raised progressively from 62 to 65, pursuant to Article 18(1) of the Tny Law, leading, in fact, to a deterioration in the prospects for young lawyers of entering the professions of the judicial system.

79 It follows that the provisions at issue are not appropriate to achieve the objective of establishing a more balanced 'age structure'.

80 In those circumstances, it must be held that the contested national provisions give rise to a difference in treatment which does not comply with the principle of proportionality and that, therefore, the Commission's action must be upheld.

81 In the light of all of the foregoing, it must be held that, by adopting a national scheme requiring compulsory retirement of judges, prosecutors and notaries when they reach the age of 62 – which gives rise to a difference in treatment on grounds of age which is not proportionate as regards the objectives pursued – Hungary has failed to fulfil its obligations under Articles 2 and 6(1) of Directive 2000/78.

Costs

82 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has requested that Hungary be ordered to pay the costs and the latter has been unsuccessful, Hungary must be ordered to pay the costs.

On those grounds, the Court (First Chamber) hereby:

1. **Declares that by adopting a national scheme requiring compulsory retirement of judges, prosecutors and notaries when they reach the age of 62 – which gives rise to a difference in treatment on grounds of age which is not proportionate as regards the objectives pursued – Hungary has failed to fulfil its obligations under Articles 2 and 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;**

2. **Orders Hungary to pay the costs.**

[Signatures]