JUDGMENT OF THE COURT (Grand Chamber)

19 January 2010 *

In Case C-555/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Landesarbeitsgericht Düsseldorf (Germany), made by decision of 21 November 2007, received at the Court on 13 December 2007, in the proceedings

Seda Kücükdeveci

v

Swedex GmbH & Co. KG,

THE COURT (Grand Chamber),

composed of V. Skouris, President, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot, R. Silva de Lapuerta, P. Lindh (Rapporteur) and C. Toader, Presidents of Chambers, C.W.A. Timmermans, A. Rosas, P. Kūris, T. von Danwitz, A. Arabadjiev and J.-J. Kasel, Judges,

* Language of the case: German.

Advocate General: Y. Bot,
Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 31 March 2009,

after considering the observations submitted on behalf of:

— Swedex GmbH & Co. KG, by M. Nebeling, Rechtsanwalt,

— the German Government, by M. Lumma and J. Möller, acting as Agents,

— the Czech Government, by M. Smolek, acting as Agent,

— the Danish Government, by J. Bering Liisberg, acting as Agent,

— Ireland, by D. O'Hagan, acting as Agent, and N. Travers BL and A. Collins SC,

— the Netherlands Government, by C. Wissels and M. de Mol, acting as Agents,

— the United Kingdom Government, by I. Rao, acting as Agent, and J. Stratford, Barrister,

— the Commission of the European Communities, by V. Kreuschitz and J. Enegren, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 July 2009,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of the principle of non-discrimination on grounds of age and 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).

2 The reference was made in the course of proceedings between Ms Kücükdeveci and her former employer Swedex GmbH & Co. KG ('Swedex') concerning the calculation of the notice period applicable to her dismissal.

Legal context

European Union legislation

3 Directive 2000/78 was adopted on the basis of Article 13 EC. Recitals 1, 4 and 25 in the preamble to the directive read as follows:

‘(1) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States and it respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms [signed at Rome on 4 November 1950] and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

…

(4) The right of all persons to equality before the law and protection against discrimination constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural

Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories. Convention No 111 of the International Labour Organisation (ILO) prohibits discrimination in the field of employment and occupation.

…

(25) The prohibition of age discrimination is an essential part of meeting the aims set out in the Employment Guidelines and encouraging diversity in the workforce. However, differences in treatment in connection with age may be justified under certain circumstances and therefore require specific provisions which may vary in accordance with the situation in Member States. It is therefore essential to distinguish between differences in treatment which are justified, in particular by legitimate employment policy, labour market and vocational training objectives, and discrimination which must be prohibited.'

4 According to Article 1 of Directive 2000/78, its purpose 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.

5 Article 2 of the directive states:

'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;

…'

6 Article 3(1) of the directive provides:

'Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

…

(c) employment and working conditions, including dismissals and pay;

…’

7 Article 6(1) of the directive provides:

‘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;

(b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;

(c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.'

8 In accordance with the first paragraph of Article 18 of the directive, it was to be transposed into the legal systems of the Member States by 2 December 2003 at the latest. The second paragraph of Article 18 provided, however, that:

'In order to take account of particular conditions, Member States may, if necessary, have an additional period of three years from 2 December 2003, that is to say a total of six years, to implement the provisions of this Directive on age and disability discrimination. In that event they shall inform the Commission forthwith …'

9 The Federal Republic of Germany made use of that option, so that the provisions of the directive relating to discrimination on grounds of age and disability were to be transposed in that Member State by 2 December 2006 at the latest.

National legislation

The General Law on equal treatment

10 Paragraphs 1, 2 and 10 of the General Law on equal treatment (Allgemeines Gleichbehandlungsgesetz) of 14 August 2006 (BGBl. 2006 I, p. 1897), which transposed Directive 2000/78, provide:

'Paragraph 1 — Object of the Law

The object of this law is to prevent or eliminate discrimination on grounds of race, ethnic origin, sex, religion or belief, disability, age or sexual orientation.

Paragraph 2 — Scope

…

(4) For dismissals, the provisions on general and specific protection against dismissal apply exclusively.

…

Paragraph 10 — Permissible different treatment on grounds of age

Paragraph 8 notwithstanding, different treatment on grounds of age is also permissible if it is objectively and reasonably justified by a legitimate aim. The means of achieving that aim must be appropriate and necessary. Such differences of treatment may include in particular the following:

…

1. the setting of special conditions on access to employment and vocational training, employment and occupation, including conditions of remuneration and termination of employment relationships, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection,

…'

Legislation on the notice period for dismissal

11 Paragraph 622 of the German Civil Code (Bürgerliches Gesetzbuch, 'the BGB') provides:

'(1) Notice may be given to terminate the employment relationship of an employee with a notice period of four weeks to the 15th or to the end of a calendar month.

(2) For termination by the employer, the notice period, if the employment relationship in the business or undertaking

1. has lasted for two years, is one month to the end of a calendar month,

2. has lasted five years, is two months to the end of a calendar month,

3. has lasted eight years, is three months to the end of a calendar month,

4. has lasted 10 years, is four months to the end of a calendar month,

5. has lasted 12 years, is five months to the end of a calendar month,

6. has lasted 15 years, is six months to the end of a calendar month,

7. has lasted 20 years, is seven months to the end of a calendar month.

In calculating the length of employment, periods prior to the completion of the employee's 25th year of age are not taken into account.'

The main proceedings and the order for reference

12 Ms Kücükdeveci was born on 12 February 1978. She was employed from 4 June 1996, in other words from the age of 18, by Swedex.

13 Swedex dismissed her by letter of 19 December 2006 with effect, taking account of the statutory notice period, from 31 January 2007. The employer calculated the notice period as if the employee had three years' length of service, although she had been in its employment for 10 years.

14 Ms Kücükdeveci contested her dismissal before the Arbeitsgericht Mönchengladbach (Labour Court, Mönchengladbach). She argued before that court that her period of notice should have been four months from 31 December 2006, that is, to 30 April 2007, pursuant to point 4 of the second sentence of Paragraph 622(2) of the BGB. That period corresponded to 10 years' service. The dispute in the main proceedings is thus between two individuals, Ms Kücükdeveci on the one hand and Swedex on the other.

15 According to Ms Kücükdeveci, in so far as it provides that periods of employment completed before the age of 25 are not to be taken into account in calculating the notice period, the second sentence of Paragraph 622(2) of the BGB is a measure which discriminates on grounds of age, contrary to European Union law, and must be disapplied.

16 The Landesarbeitsgericht Düsseldorf (Higher Labour Court, Düsseldorf), hearing the case on appeal, found that the period for transposing Directive 2000/78 had expired by the date of the dismissal. That court also considered that Paragraph 622 of the BGB contains a difference of treatment directly linked to age, and, while it is not convinced that it is unconstitutional, it regards its compatibility with European Union law as doubtful. It is not sure in this respect whether the possible existence of direct discrimination on grounds of age must be assessed by reference to primary European Union law, as the judgment in Case C-144/04 *Mangold* [2005] ECR I-9981 appears to suggest, or by reference to Directive 2000/78. Noting that the national provision at issue is clear and could not be interpreted, if that were necessary, in a manner compatible with the directive, the court is also uncertain whether, to be able to disapply that provision in a dispute between private individuals, it must first, in order to ensure the protection of the legitimate expectations of persons subject to the law, make a reference to the Court for a preliminary ruling so that the Court can confirm that the provision is incompatible with European Union law.

17 In those circumstances, the Landesarbeitsgericht Düsseldorf decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

‘(1) (a) Does a national provision under which the periods of notice to be observed by employers are extended incrementally as the length of employment increases, but the employee’s periods of employment before the age of 25 are disregarded, infringe the Community law prohibition of discrimination on grounds of age, in particular primary Community law or Directive 2000/78 …?

(b) Can the fact that employers are required to observe only a basic period of notice when terminating the employment of younger employees be justified on the grounds that employers are recognised as having an operational interest in flexibility as regards staffing — an interest which would be adversely affected by longer periods of notice — and that younger employees are not recognised as having the protection available to older employees (by means of longer notice periods) with respect to their employment status or arrangements, for example because, having regard to their age and/or their lesser social, family and private obligations, they are assumed to have greater occupational and personal flexibility and mobility?

(2) If Question 1(a) is answered in the affirmative and Question 1(b) is answered in the negative:

In legal proceedings between private individuals, must a court of a Member State disapply a statutory provision which is explicitly contrary to Community law, or is the legitimate expectation of persons subject to the law — that national laws which are in force will be applied — to be taken into account so that a provision becomes inapplicable only after the Court of Justice has ruled on the disputed provision or a substantially similar provision?'

The questions referred for a preliminary ruling

Question 1

18 By its first question, the referring court asks essentially whether national legislation such as that at issue in the main proceedings, under which periods of employment

completed by the employee before reaching the age of 25 are not taken into account in calculating the notice period for dismissal, constitutes a difference of treatment on grounds of age prohibited by European Union law, in particular primary law or Directive 2000/78. It is unsure, in particular, whether such legislation is justified on the ground that only a basic notice period is to be observed in the case of dismissal of younger workers, first, in order to enable employers to manage their personnel flexibly, which would not be possible with longer notice periods, and, second, because it is reasonable to require greater personal and occupational mobility from younger workers than from older ones.

19 To answer that question, it must first be ascertained, as the referring court suggests, whether the question should be examined by reference to primary European Union law or to Directive 2000/78.

20 In the first place, that the Council of the European Union adopted Directive 2000/78 on the basis of Article 13 EC, and the Court has held that that directive does not itself lay down the principle of equal treatment in the field of employment and occupation, which derives from various international instruments and from the constitutional traditions common to the Member States, but has the sole purpose of laying down, in that field, a general framework for combating discrimination on various grounds including age (see *Mangold*, paragraph 74).

21 In that context, the Court has acknowledged the existence of a principle of non-discrimination on grounds of age which must be regarded as a general principle of European Union law (see, to that effect, *Mangold*, paragraph 75). Directive 2000/78 gives specific expression to that principle (see, by analogy, Case 43/75 *Defrenne* [1976] ECR 455, paragraph 54).

22 It should also be noted that Article 6(1) TEU provides that the Charter of Fundamental Rights of the European Union is to have the same legal value as the Treaties. Under Article 21(1) of the charter, '[a]ny discrimination based on … age … shall be prohibited'.

23 For the principle of non-discrimination on grounds of age to apply in a case such as that at issue in the main proceedings, that case must fall within the scope of European Union law.

24 In contrast to the situation concerned in Case C-427/06 *Bartsch* [2008] ECR I-7245, the allegedly discriminatory conduct adopted in the present case on the basis of the national legislation at issue occurred after the expiry of the period prescribed for the Member State concerned for the transposition of Directive 2000/78, which, for the Federal Republic of Germany, ended on 2 December 2006.

25 On that date, that directive had the effect of bringing within the scope of European Union law the national legislation at issue in the main proceedings, which concerns a matter governed by that directive, in this case the conditions of dismissal.

26 A national provision such as the second sentence of Paragraph 622(2) of the BGB, in that it provides that, in calculating the notice period, periods of employment completed before the employee reaches the age of 25 are not taken into account, affects the conditions of dismissal of employees. Such a provision must therefore be regarded as laying down rules on the conditions of dismissal.

27 It follows that it is the general principle of European Union law prohibiting all discrimination on grounds of age, as given expression in Directive 2000/78, which must be the basis of the examination of whether European Union law precludes national legislation such as that at issue in the main proceedings.

28 In the second place, as regards the question whether the legislation at issue in the main proceedings contains a difference of treatment on grounds of age, it should be recalled that under Article 2(1) of Directive 2000/78, for the purposes of that directive, the 'principle of equal treatment' means that there is to be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1 of the directive. Article 2(2)(a) of the directive states that, for the purposes of Article 2(1), direct discrimination is to be taken to occur where one person is treated less favourably than another person in a comparable situation, on any of the grounds referred to in Article 1 (see Case C-411/05 *Palacios de la Villa* [2007] ECR I-8531, paragraph 50, and Case C-388/07 *Age Concern England* [2009] ECR I-1569, paragraph 33).

29 In the present case, the second sentence of Paragraph 622(2) of the BGB affords less favourable treatment to employees who entered the employer's service before the age of 25. That national provision thus introduces a difference of treatment between persons with the same length of service, depending on the age at which they joined the undertaking.

30 Thus in the case of two employees each with 20 years' seniority in service, the one who joined the undertaking at the age of 18 will be entitled to a notice period of five months, whereas the period will be seven months for the one who joined at the age of 25. Moreover, as the Advocate General observes in point 36 of his Opinion, the national legislation at issue in the main proceedings disadvantages younger workers generally compared to older ones, in that the former — as the situation of Ms Kücükdeveci shows — may, despite several years' seniority in service in the undertaking, be excluded from benefiting from the progressive extension of notice periods in the case of dismissal according to the length of the employment relationship, from which older workers of comparable seniority will, by contrast, be able to benefit.

31 It follows that the national legislation at issue contains a difference of treatment on grounds of age.

32 In the third place, it must be examined whether that difference of treatment is liable to constitute discrimination prohibited by the principle of non-discrimination on grounds of age given expression by Directive 2000/78.

33 The first subparagraph of Article 6(1) of Directive 2000/78 states that a difference of treatment on grounds of age does not constitute discrimination if, within the context of national law, it is 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.

34 According to the information provided by the referring court and the statements made at the hearing by the German Government, Paragraph 622 of the BGB originates in a law of 1926. That that law set the threshold at 25 was the outcome of a compromise between, first, the government of the time, which wanted a uniform extension by three months of the notice period for the dismissal of workers aged over 40, second, the supporters of a progressive extension of that period for all workers, and, third, the supporters of a progressive extension of the notice period without taking the period of employment into account, the purpose of the rule being to give employers partial relief from lengthy periods of notice for workers aged under 25.

35 The referring court states that the second sentence of Paragraph 622(2) of the BGB reflects the legislature's assessment that young workers generally react more easily and more rapidly to the loss of their jobs and greater flexibility can be demanded of them. A shorter notice period for younger workers also facilitates their recruitment by increasing the flexibility of personnel management.

36 Objectives of the kind mentioned by the German Government and the referring court clearly belong to employment and labour market policy within the meaning of Article 6(1) of Directive 2000/78.

37 It remains to be ascertained, in accordance with the wording of that provision, whether the means of achieving such a legitimate aim are 'appropriate and necessary'.

38 The Member States enjoy a broad discretion in the choice of the measures capable of achieving their objectives in the field of social and employment policy (see *Mangold*, paragraph 63, and *Palacios de la Villa*, paragraph 68).

39 The referring court indicates that the aim of the national legislation at issue in the main proceedings is to afford employers greater flexibility in personnel management by alleviating the burden on them in respect of the dismissal of young workers, from whom it is reasonable to expect a greater degree of personal or occupational mobility.

40 However, the legislation is not appropriate for achieving that aim, since it applies to all employees who joined the undertaking before the age of 25, whatever their age at the time of dismissal.

41 As regards the aim pursued by the legislature at the time of adoption of the national legislation at issue in the main proceedings, adduced by the German Government, of strengthening the protection of workers according to their length of service in the undertaking, it is clear that, under that legislation, the extension of the notice period for dismissal according to the employee's seniority in service is delayed for all employees who joined the undertaking before the age of 25, even if the person concerned has a long

length of service in the undertaking at the time of dismissal. The legislation cannot therefore be regarded as appropriate for achieving that aim.

42 It should be added that, as the referring court points out, the national legislation at issue in the main proceedings affects young employees unequally, in that it affects young people who enter active life early after little or no vocational training, but not those who start work later after a long period of training.

43 It follows from all the above considerations that the answer to Question 1 is that European Union law, more particularly the principle of non-discrimination on grounds of age as given expression by Directive 2000/78, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that periods of employment completed by an employee before reaching the age of 25 are not taken into account in calculating the notice period for dismissal.

Question 2

44 By its second question, the referring court asks whether, where it is hearing proceedings between individuals, in order to disapply a national provision which it considers to be contrary to European Union law, it must first, to ensure protection of the legitimate expectations of persons subject to the law, make a reference to the Court under Article 267 TFEU, so that the Court can confirm that the legislation is incompatible with European Union law.

45 As regards, first, the role of the national court when called on to give judgment in proceedings between individuals in which it is apparent that the national legislation at issue is contrary to European Union law, the Court has held that it is for the national courts to provide the legal protection which individuals derive from the rules of

European Union law and to ensure that those rules are fully effective (see, to that effect, Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-8835, paragraph 111, and Case C-268/06 *Impact* [2008] ECR I-2483, paragraph 42).

46 In this respect, where proceedings between individuals are concerned, the Court has consistently held that a directive cannot of itself impose obligations on an individual and cannot therefore be relied on as such against an individual (see, inter alia, Case 152/84 *Marshall* [1986] ECR 723, paragraph 48; Case C-91/92 *Faccini Dori* [1994] ECR I-3325, paragraph 20; and *Pfeiffer and Others*, paragraph 108).

47 However, the Member States' obligation arising from a directive to achieve the result envisaged by that directive and their duty to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation are binding on all the authorities of the Member States including, for matters within their jurisdiction, the courts (see, inter alia, to that effect, Case 14/83 *von Colson and Kamann* [1984] ECR 1891, paragraph 26; Case C-106/89 *Marleasing* [1990] ECR I-4135, paragraph 8; *Faccini Dori*, paragraph 26; Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, paragraph 40; *Pfeiffer and Others*, paragraph 110; and Joined Cases C-378/07 to C-380/07 *Angelidaki and Others* [2009] ECR I-3071, paragraph 106).

48 It follows that, in applying national law, the national court called on to interpret it is required to do so, as far as possible, in the light of the wording and the purpose of the directive in question, in order to achieve the result pursued by the directive and thereby comply with the third paragraph of Article 288 TFEU (see, to that effect, *von Colson and Kamann*, paragraph 26; *Marleasing*, paragraph 8; *Faccini Dori*, paragraph 26; and *Pfeiffer and Others*, paragraph 113). The requirement for national law to be interpreted in conformity with European Union law is inherent in the system of the Treaty, since it permits the national court, within the limits of its jurisdiction, to ensure the full effectiveness of European Union law when it determines the dispute before it (see, to that effect, *Pfeiffer and Others*, paragraph 114).

49 According to the national court, however, because of its clarity and precision, the second sentence of Paragraph 622(2) of the BGB is not open to an interpretation in conformity with Directive 2000/78.

50 It must be recalled here that, as stated in paragraph 20 above, Directive 2000/78 merely gives expression to, but does not lay down, the principle of equal treatment in employment and occupation, and that the principle of non-discrimination on grounds of age is a general principle of European Union law in that it constitutes a specific application of the general principle of equal treatment (see, to that effect, *Mangold*, paragraphs 74 to 76).

51 In those circumstances, it for the national court, hearing a dispute involving the principle of non-discrimination on grounds of age as given expression in Directive 2000/78, to provide, within the limits of its jurisdiction, the legal protection which individuals derive from European Union law and to ensure the full effectiveness of that law, disapplying if need be any provision of national legislation contrary to that principle (see, to that effect, *Mangold*, paragraph 77).

52 As regards, second, the obligation of the national court, hearing proceedings between individuals, to make a reference to the Court for a preliminary ruling on the interpretation of European Union law before it can disapply a national provision which it considers to be contrary to that law, it is apparent from the order for reference that this aspect of the question has been raised because, under national law, the referring court cannot decline to apply a national provision in force unless that provision has first been declared unconstitutional by the Bundesverfassungsgericht (Federal Constitutional Court).

53 The need to ensure the full effectiveness of the principle of non-discrimination on grounds of age, as given expression in Directive 2000/78, means that the national court, faced with a national provision falling within the scope of European Union law which it considers to be incompatible with that principle, and which cannot be interpreted in

conformity with that principle, must decline to apply that provision, without being either compelled to make or prevented from making a reference to the Court for a preliminary ruling before doing so.

54 The possibility thus given to the national court by the second paragraph of Article 267 TFEU of asking the Court for a preliminary ruling before disapplying the national provision that is contrary to European Union law cannot, however, be transformed into an obligation because national law does not allow that court to disapply a provision it considers to be contrary to the constitution unless the provision has first been declared unconstitutional by the Constitutional Court. By reason of the principle of the primacy of European Union law, which extends also to the principle of non-discrimination on grounds of age, contrary national legislation which falls within the scope of European Union law must be disapplied (see, to that effect, *Mangold*, paragraph 77).

55 It follows that the national court, hearing proceedings between individuals, is not obliged but is entitled to make a reference to the Court for a preliminary ruling on the interpretation of the principle of non-discrimination on grounds of age, as given expression by Directive 2000/78, before disapplying a provision of national law which it considers to be contrary to that principle. The optional nature of such a reference is not affected by the conditions of national law under which a court may disapply a national provision which it considers to be contrary to the constitution.

56 In the light of the foregoing, the answer to Question 2 is that it is for the national court, hearing proceedings between individuals, to ensure that the principle of non-discrimination on grounds of age, as given expression in Directive 2000/78, is complied with, disapplying if need be any contrary provision of national legislation, independently of whether it makes use of its entitlement, in the cases referred to in the second paragraph of Article 267 TFEU, to ask the Court for a preliminary ruling on the interpretation of that principle.

Costs

57 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **European Union law, more particularly the principle of non-discrimination on grounds of age as given expression by Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that periods of employment completed by an employee before reaching the age of 25 are not taken into account in calculating the notice period for dismissal.**

2. **It is for the national court, hearing proceedings between individuals, to ensure that the principle of non-discrimination on grounds of age, as given expression in Directive 2000/78, is complied with, disapplying if need be any contrary provision of national legislation, independently of whether it makes use of its entitlement, in the cases referred to in the second paragraph of Article 267 TFEU, to ask the Court of Justice of the European Union for a preliminary ruling on the interpretation of that principle.**

[Signatures]