

## Maximum age of 35 for recruitment as officer in Basque Country police force was not discriminatory in present case

In today's **Chamber judgment**<sup>1</sup> in the case of [Ferrero Quintana v. Spain](#) (application no. 2669/19) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 1 of Protocol No. 12 (general prohibition of discrimination)** of the European Convention on Human Rights

The case concerned the imposition of a maximum age of 35 for a public competition to fill several police-officer positions in the Autonomous Community of the Basque Country (*Ertzaintza*). The applicant, who had been provisionally authorised to take part in the various competition tests – where he ranked 49th out of 60 – was ultimately not recruited on the grounds that he was over the age-limit.

The Court found that it was established that restricting admission to positions for police officers of the lowest rank in the *Ertzaintza* by establishing a maximum age of 35, at the relevant time, had been necessary to ensure and maintain the functional capacity of that autonomous police force.

The Court also noted that the maximum age had been raised to 38 in 2019 and that this new rule had been accompanied by a transitional measure that allowed candidates who had successfully completed the competition on a provisional basis in previous years, despite having been over the age of 35 (in particular the applicant), to be admitted immediately to the *Ertzaintza*.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

### Principal facts

The applicant, Asier Ferrero Quintana, is a Spanish national who was born in 1978. In 2014 he took part in a public competition to fill 60 positions of the lowest rank in the police force of the Autonomous Community of the Basque Country (*Ertzaintza*). Among the preconditions for taking part in the competition was the requirement that candidates should be over 18 and under 35 years of age at the time their applications were submitted.

Even though he had reached the age of 35 the previous year, the applicant and other individuals in the same situation were provisionally authorised to take part in the competition pending the final decision of the courts in an action brought by another candidate to challenge the validity of the age-limit.

Thus, the applicant successfully completed the various competition tests and was ranked 49th out of 60. He was then authorised, still on a provisional basis, to complete a training course (in 2015) and a traineeship (until 2016). However, he was ultimately not recruited at the end of his training and traineeship on the ground that he was over the age-limit. The domestic remedies he pursued against this decision were unsuccessful.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

The applicant was nevertheless placed on a reserve list (*bolsa de trabajo*) for temporary officers of the local police of the Basque Country and worked as an officer on a temporary basis from January 2018 to June 2019.

In 2019 a legislative amendment to the Basque Country Police Act raised the age-limit from 35 to 38. This applied to candidates who had successfully completed the public competitions of 2014, 2015 and 2016 and had been refused a position on account of their age. Consequently, the applicant was appointed as a police officer in the *Ertzaintza* in September 2019.

## Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 12 (general prohibition of discrimination), the applicant complained about his not being recruited and alleged that he had been the subject of discrimination on grounds of age. He submitted that the medical examinations and physical aptitude tests he had undergone had confirmed that he was physically apt to hold the position in question.

The application was lodged with the European Court of Human Rights on 24 December 2018.

Judgment was given by a Chamber of seven judges, composed as follows:

Georgios A. **Serghides** (Cyprus), *Acting President*,  
Georges **Ravarani** (Luxembourg),  
María **Elósegui** (Spain),  
Darian **Pavli** (Albania),  
Peeter **Roosma** (Estonia),  
Andreas **Zünd** (Switzerland),  
Frédéric **Krenc** (Belgium),

and also Milan **Blaško**, *Section Registrar*.

## Decision of the Court

The Court observed that in passing both the medical and physical tests of the competition, the applicant had obtained results that qualified him for one of the positions on offer and he had been disqualified solely on account of his age. He had therefore been treated differently on the ground of his age, which constituted “other status” within the meaning of Article 1 of Protocol No. 12.

The Court took the view that there had been two comparable categories of individuals in the present case: individuals up to the age of 35 who wished to take part in the public competition to fill positions of the lowest rank in the *Ertzaintza* and those over the age of 35 wishing to take part in the same competition. It further held that the Contracting Parties’ margin of appreciation in establishing the rules of admission to public-sector employment and the terms and conditions of such employment covered admission to employment in police forces as well. The Court was of the view that the national authorities had enjoyed a wide margin of appreciation in the present case.

Moreover, it observed that the purpose of the decision not to admit the applicant as a police officer of the lowest rank in the *Ertzaintza* had not been to exclude him but rather to ensure the proper functioning of that police force. This was a legitimate aim for the purposes of Article 1 of Protocol No. 12.

As to whether the justification provided had been objective and reasonable, the Court clarified that it could allow that age was a relevant factor in determining a person’s physical aptitude. It noted that the duties of officers of the police force of the Autonomous Community of the Basque Country

were not administrative in nature, but operational or executive, requiring particular physical aptitude.

Moreover, the question whether someone possessed particularly robust physical capabilities had to be assessed dynamically, taking into consideration the years of service the officer would be required to complete after recruitment, and not in a static manner, solely at the time of the recruitment competition. Thus, even assuming that the applicant, like other candidates over the age of 35 at the time of the physical aptitude tests, had been in peak physical condition at that time, it could be allowed that, having regard to the nature of a police officer's duties, it was important to ensure that these physical capabilities were maintained for a maximum number of years, and the impact of the passage of time in that regard could not be neglected.

The Court also took note of the statistics provided by the Government to substantiate alleged fears of a general ageing of *Ertzaintza* personnel. The Court acknowledged that the period of fully operational professional activity, during which officers of the lowest grade in the *Ertzaintza* were in peak condition to provide police services, was shorter than the period of activity in other professions. In its view, this had a considerable impact on the operational nature of the police force. It might therefore be appropriate, by way of measures such as the one in question, to ensure that a sufficient number of "young" officers were present to carry out tasks involving greater physical exertion.

The Court took the view that, in general, such questions of internal organisation fell within the Contracting States' margin of appreciation. The national authorities were better placed than it was to set an age-limit for admission to the police services.

In consequence, the Court took the view that it was established that restricting admission to positions for police officers of the lowest rank in the *Ertzaintza* by establishing a maximum age of 35, at the relevant time, had been necessary to ensure and maintain the functional capacity of that autonomous police force. Given that the margin of appreciation with regard to the requirements for admission to public employment in the area of police and security forces was wide, the national authorities had provided relevant and sufficient reasons to justify the necessity of the measure. There had therefore been no violation of Article 1 of Protocol No. 1 to the Convention.

## Separate opinions

Judges Serghides, Elósegui and Krenc each expressed a concurring opinion. These opinions are annexed to the judgment.

*The judgment is available only in French.*

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