

SUMMARY

## **ECJ 16 January 2014, case C-429/12 (Siegfried Pohl - v - ÖBB Infrastruktur AG), Age discrimination**

### **Facts**

Mr Pohl was employed by Austrian Railways ('ÖBB') from 25 November 1974 (at which time he was under 18 years of age) until 4 March 2005. His last salary increase was on 1 January 2002, when he was promoted to point 15 on the salary scale. In 2011, many years after retiring, he brought an action against his former employer, arguing that he should have been promoted to point 16 on the scale before retiring, in which case his pension benefits would have been higher. His claim was based on the fact that, under Austrian law, railway employees have a 'reference date' for advancement, under which years worked before the age of 18 do not count, years worked in Austria after that age but prior to being hired by ÖBB count for half a year and each year of service following hiring counts fully. On this basis, ÖBB informed Mr Pohl, at the time he was hired, that his reference date for the purpose of advancement was 12 November 1971. Had Mr Pohl's years of service before the age of 18 counted and had his years of service between his 18<sup>th</sup> birthday and 25 November 1974 counted in full rather than for half, his 'reference date' would have been earlier and he would have reached point 16 on the salary scale before retiring.

### **National proceedings**

The *Landesgericht Innsbruck* dismissed Mr Pohl's claim. On appeal, the *Oberlandesgericht Innsbruck* submitted four questions to the ECJ for a preliminary ruling. The first two questions and the fourth deal with equal treatment. The third question has to do with the fact that, under Austrian law, Mr Pohl's claim was time-barred, as he had failed to make a claim within 30 years from the conclusion of the agreement fixing the reference date. The referring court wished to know whether the result of EU law is that the 30-year limitation period should start to run from the conclusion of the agreement fixing the reference date (in this case 1974)

or from the date that the ECJ delivered its judgments in *Österreichischer Gewerkschaftsbund* (case C-195/98, judgment delivered in 2000) or *Hütter* (case C-88/08, delivered in 2009).

### **ECJ's findings**

It is settled case law that, in the absence of EU rules, it is for the national legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down detailed procedural rules governing the safeguarding of rights which individuals derive from EU law. However, these rules must not be less favourable than those governing similar national actions (principle of equivalence) and must not render the exercise of rights conferred by EU law practically impossible or excessively difficult (principle of effectiveness). Given that EU law does not provide for rules relating to periods within which actions must be brought in regard to the principle of equal treatment, the Austrian time-bar rules apply, subject to said principles (§ 23-25).

The 30-year limitation period applies irrespective of whether the claim comes within the scope of EU law or that of Austrian law. Therefore, that period is not contrary to the principle of equivalence (§ 26-28).

The dates on which the ECJ ruled in *Österreichischer Gewerkschaftsbund* and *Hütter* are not relevant. A preliminary ruling by the ECJ does not create or alter the law, it is merely declaratory (§ 29-32).

Mr Pohl's claim was time-barred from 24 November 2004, that is to say almost seven years before he brought his claim. Even if one were to take his last advancement on 1 January 2002 as a starting point for the time-bar, he still had almost three years before his claim became time-barred. And if one were to take 3 December 2007 - the deadline for implementing Directive 2000/78 - as the start date, he would still have had almost one year to bring his claim before the fatal date of 24 November 2004. In the light of these facts, the Austrian 30-year limitation period, which started to run on 24 November 1974, was not such as to make it practically impossible or excessively difficult for Mr Pohl to exercise the rights he may derive from EU law (§ 33-36).

### **Ruling**

European Union law, and, in particular, the principle of effectiveness, does not preclude national legislation, such as that at issue in the main proceedings, from making the right of an

employee to seek a reassessment of periods of service to be taken into account in order to fix a reference date for the purposes of advancement, subject to a 30-year limitation period. This period either starts to run from the conclusion of the agreement on the basis of which that reference date was fixed or from the time when the person was placed on an incorrect point on the salary scale.

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**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2014-01-16

**Case number:** C-429/12