

SUMMARY

**ECJ 5 December 2013, case C-514/12
(Zentralsbetriebsrat der
gemeinnützigen Salzburger
Landeskliniken Betriebs GmbH - v -
Land Salzburg), Nationality
discrimination**

Facts

Gemeinnützigen Salzburger Landeskliniken Betriebs GmbH (“SALK”) is a holding company for three hospitals and a number of other health care providers in the province of Salzburg. The province is the sole shareholder. On the relevant date, SALK employed 716 doctors, of whom 113 came from other EU/EEA countries, and 2,850 other healthcare professionals, of whom 340 came from other EU/EEA countries. The provincial laws provided that SALK staff were placed on a step within their salary grade, and periodically advanced to the next step, depending on their “reference date”. In determining this date, the provincial law drew a distinction with respect to prior service in the period before being hired by SALK. If the prior service was in the province of Salzburg, it was taken fully into account. Prior service elsewhere only counted for 60%.

National proceedings

SALK’s central works council (*Zentralbetriebsrat*) applied to the local court, the *Landesgericht Salzburg*. It sought a declaration that all employees coming from anywhere within the EU/EEA be entitled to have 100% of their prior service taken into account for the purpose of calculating the “reference date”. The *Landesgericht* found that the provincial law did not constitute direct discrimination or grounds of nationality, as it applied without distinction to Austrian and

other EU nationals. However, the court was uncertain as to whether the provincial law was compatible with Article 45 TFEU (free movement of workers and abolition of discrimination based on nationality as regards employment) and Article 7(1) of Regulation 492/2011 (nondiscrimination by reason of nationality as regards employment). It therefore referred a question to the ECJ.

ECJ's findings

Unless objectively justified and proportionate to the aim pursued, a provision of national law - even if it applies regardless of nationality - must be regarded as indirectly discriminatory if it is intrinsically liable to affect migrant workers more than national workers and if there is a consequent risk that it will place the former at a particular disadvantage. The provincial law at issue in this case is liable to affect migrant workers more than national workers as they will in all likelihood have accrued professional experience elsewhere before entering employment within Salzburg province. In addition, the law in question has a similar impact on employees re-entering employment within Salzburg province who, after initially working in that province, have gone to work elsewhere. This constitutes an obstacle to freedom of movement (§ 26-32).

The ECJ rejects the argument that the legislation at issue has only a random impact on a migrant worker's decision to join SALK. The possibility of exercising a freedom so fundamental as the freedom of movement cannot be limited by subjective considerations such as the reasons why a migrant worker chooses to make use of his freedom of movement within the EU. Any restriction on the free movement of goods, persons, services and capital, however minor, is prohibited (§ 33-35).

Even if the provincial law at issue introduces a "loyalty reward" for workers who spend their entire career with SALK (a disputed point), the obstacle which it entails is not such as to ensure achievement of that objective, given that all prior service with Salzburg province, and not only that with SALK, counts fully towards determining salary (§ 36-40).

The ECJ also rejects the argument that the provincial law in question creates administrative simplification and transparency (§ 41-44).

Ruling

Article 45 TFEU and Article 7(1) of Regulation (EU) No 492/2011 [...] must be interpreted as precluding national legislation under which, in determining the reference date for the purposes of the advancement of an employee of a local or regional authority to the next pay step in his grade, account is to be taken of all uninterrupted periods of service completed with that authority, but of only a proportion of any other periods of service.

Creator: European Court of Justice (ECJ)

Verdict at: 2013-12-05

Case number: C-514/12