

SUMMARY

# **ECJ 21 January 2015, &nbsp;C-529/13 &nbsp;(Georg Felber &nbsp;– v &nbsp;– Bundesministerin f&uuml;r Unterricht, Kunst und Kultur), Age discrimination**

## **Facts**

Mr Felber was a federal civil servant since 1991. Under Austrian law as it stood in the relevant period, certain pre-service periods of training and professional practice counted towards calculating a civil servant's pensionable service time. However, for the purpose of calculating pension rights, only the periods of training and professional practice completed after the age of 18 were "credited", i.e. taken into consideration. Consequently the three years of education completed by Mr Felber before the age of 18 were not credited. Relying on the ECJ's judgment in Hütter (C-88/08), Mr Felber requested his employer to credit those three years. In that case – also Austrian – the ECJ held that Directive 2000/78 precludes "national legislation which, in order not to treat general education less favourably than vocational education and to promote the integration of young apprentices into the labour market, excludes periods of employment completed before the age of 18 from being taken into account for the purpose of determining the incremental step at which contractual public servants of a Member State are graded".

## **National proceedings**

The Landesschulrat für Salzburg and, on appeal, the Federal Minister for Education, Art and Culture, rejected Mr Felber's application. He appealed to the Verwaltungsgerichtshof. It referred three questions to the ECJ. The first and third questions were, essentially, whether Directive 2000/78 precludes national legislation – in this case, Paragraph 54(2) of the Pensionsgesetz 1965 ("Paragraph 54(2)") – which excludes the crediting of periods of school

education completed by a civil servant before the age of 18 for the purpose of the grant of pension entitlement and the calculation of the amount of his retirement pension, although those periods are credited when they are completed after that age is reached.

### **ECJ's findings**

- 1.Paragraph 54(2) discriminates directly on the grounds of age, given that it establishes a difference in treatment between persons based on when they completed their school education. The issue is whether this difference in treatment is justified (§ 22-28).
- 2.Paragraph 54(2) is an exception which was introduced so as not to disadvantage, in terms of the acquisition of pension rights, civil servants in higher positions, who continued their schooling beyond the age of 18 before entering the civil service, as compared to civil servants, in lower positions, who were able to join the civil service at age 18. Taking into consideration that Member States enjoy broad discretion in their choice to pursue a particular aim in the field of social and employment policy, this is a legitimate aim (§ 29-32).
- 3.The minimum age for employment in the public service is 18. Therefore, a civil servant can only participate in the civil service pension scheme after that age. Consequently, the exclusion of crediting periods of education completed before age 18 is appropriate for achieving a policy which enables all members of the scheme to begin to contribute at the same age and to acquire the right to a full pension, thus guaranteeing the equal treatment of all civil servants (§ 33-35).
- 4.Does Paragraph 54(2) go beyond what is necessary to obtain the objective pursued? Mr Felber's application seeks to take into account only periods of education, not periods of employment as was the case in Hütter. Therefore, Mr Felber cannot rely on Hütter (§ 36).
- 5.Periods of study completed after the age of 18 are not considered to be periods equivalent to years of service and can only be taken into account for calculating pension rights if an extra ("special") contribution is made to the pension scheme corresponding to the missing contributions. That special contribution fulfils a compensation function. In these circumstances, given Member States' broad discretion in determining how to achieve their legitimate social policy objectives, Paragraph 54(2) does not go beyond what is necessary to achieve those objectives (§ 37-39).

### **Ruling**

Article 2(1) and (2)(a) and Article 6(1) of Council Directive 2000/78 [...] must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which

excludes the crediting of periods of school education completed by a civil servant before the age of 18 for the purpose of the grant of pension entitlement and reasonably justified by a legitimate aim relating to employment policy and labour market policy and, secondly, it constitutes an appropriate and necessary means of achieving that aim.

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

**Verdict at:** 2015-01-21

**Case number:** C-529/13