

## SUMMARY

# ECJ 8 May 2019, case C-396/17, (Leitner), Age discrimination

## *Martin Leitner – v – Landespolizeidirektion Tirol, Austrian case*

### Questions

Must Articles 1, 2 and 6 of Directive 2000/78, read in conjunction with Article 21 of the Charter, be interpreted as precluding national legislation, such as that at issue in the main proceedings, which entered into force retroactively and which, for the purposes of putting a stop to discrimination on grounds of age, provides for the transfer of currently employed civil servants to a new remuneration and advancement system under which the initial classification of those civil servants is determined on the basis of the last salary they received under the previous system?

Must Article 47 of the Charter and Article 9 of Directive 2000/78 be interpreted as precluding national legislation which, in a situation such as that at issue in the main proceedings, reduces the scope of the review which national courts are entitled to conduct, by excluding questions concerning the basis of the ‘transition amount’ calculated according to the rules of the previous remuneration and advancement system?

Must the principle of the primacy of EU law must be interpreted as meaning that when national legislation, such as that at issue in the main proceedings, disregards the principle of non-discrimination on grounds of age and Article 47 of the Charter, it requires that the situation of currently employed civil servants who have been subjected to such discrimination on grounds of age be examined again, when the mechanism for the transfer to the new remuneration and advancement system is applied, and that those civil servants be transferred to that new system without discrimination?

### Ruling

Articles 1, 2 and 6 of Council Directive 2000/78/EC of 27 November 2000, establishing a

general framework for equal treatment in employment and occupation, read in conjunction with Article 21 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which entered into force retroactively, and which, for the purpose of putting a stop to discrimination on grounds of age, provides for the transfer of currently employed civil servants to a new remuneration and advancement system under which the initial classification of those civil servants is determined on the basis of the last salary they received under the previous system.

Article 47 of the Charter of Fundamental Rights of the European Union and Article 9 of Directive 2000/78 must be interpreted as precluding national legislation which, in a situation such as that at issue in the main proceedings, reduces the scope of the review which national courts are entitled to conduct, by excluding questions concerning the basis of the ‘transition amount’ calculated according to the rules of the previous remuneration and advancement system.

In a situation where national provisions cannot be interpreted in a manner which is consistent with Directive 2000/78, the national court is obliged, within the scope of its powers, to guarantee the legal protection conferred on individuals by that directive and to guarantee that that protection is fully effective, by disapplying, if need be, any contrary provision of national law. EU law must be interpreted as meaning that where there has been a finding of discrimination which is contrary to EU law, and for as long as measures reinstating equal treatment have not been adopted, the reinstatement of equal treatment, in a case such as that at issue in the main proceedings, involves granting civil servants disadvantaged by the previous remuneration and advancement system the same benefits as those enjoyed by the civil servants treated more favourably by that system, both as regards the recognition of periods of service completed before the age of 18 and advancement in the pay scale and, accordingly, the award of financial compensation to those civil servants discriminated against in the sum of the difference between the amount of remuneration that the civil servant concerned ought to have received had he not been treated in a discriminatory manner and the remuneration which he in fact received.

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

**Verdict at:** 2019-05-08

**Case number:** C-396/17