

SUMMARY

ECJ 8 May 2019, case C-24/17, (Österreichischer Gewerkschaftsbund), Age discrimination

Österreichischer Gewerkschaftsbund, Gewerkschaft Öffentlicher Dienst – v – Republik Österreich, Austrian case

Questions

Must Articles 1, 2 and 6 of Directive 2000/78, read in combination with Article 21 of the Charter, be interpreted as precluding national legislation, such as that at issue in the main proceedings, entering into force retroactively, that, for the purposes of putting an end to discrimination on grounds of age, provides for the transition of active contractual public servants to a new system of remuneration and advancement in the context of which the initial grading of those contractual public servants is calculated according to their last remuneration paid under the previous system?

Must EU law be interpreted as meaning that, where discrimination, contrary to EU law, has been established, as long as measures reinstating equal treatment have not been adopted, the restoration of equal treatment, in a case such as that at issue in the main proceedings, involves granting contractual public servants treated unfavourably by the old system of remuneration and advancement the same benefits as those enjoyed by the contractual public servants treated favourably by that system, both as regards the recognition of periods of service completed before the age of 18 and advancement in the salary scale and, consequently, granting financial compensation to contractual public servants discriminated against?

Must Article 45 TFEU and Article 7(1) of Regulation No 492/2011 be interpreted as precluding national legislation, in accordance with which, in order to determine the remuneration seniority of a contractual public servant, previous service periods completed in an employment relationship with a local authority or municipal association of a Member State of the European Economic Area, the Republic of Turkey or the Swiss Confederation, or with an

organisation of the European Union or an intergovernmental organisation of which Austria is a member, or with any similar body, must be accredited in their entirety, whereas all other previous service periods are taken into account only up to a maximum of 10 years and in so far as they are relevant?

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 combination 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, entering into force retroactively, that, for the purposes of putting an end to discrimination on grounds of age, provides for the transition of active contractual public servants to a new system of remuneration and advancement in the context of which the initial grading of those contractual public servants is calculated according to their last remuneration paid under the previous system.

In the event that national provisions cannot be interpreted in conformity with Directive 2000/78, the national court is required to provide, within the limits of its jurisdiction, the legal protection that individuals derive from that directive and to ensure the full effectiveness of that directive, disapplying, if need be, any incompatible provision of national legislation. EU law must be interpreted as meaning that, where discrimination, contrary to EU law, has been established, as long as measures reinstating equal treatment have not been adopted, the restoration of equal treatment, in a case such as that at issue in the main proceedings, involves granting contractual public servants treated unfavourably by the old system of remuneration and advancement the same benefits as those enjoyed by the contractual public servants favoured by that system, both as regards the recognition of periods of service completed before the age of 18 and advancement in the salary scale and, consequently, granting compensation to contractual public servants discriminated against that is equal to the difference between the amount of remuneration the contractual public servant should have received if he had not been treated in a discriminatory manner and the amount of remuneration he actually received.

Article 45 TFEU and Article 7(1) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union must be interpreted as precluding national legislation, in accordance with which, in order to determine the remuneration seniority of a contractual public servant, previous service periods completed in an employment relationship with a local authority or municipal association of a Member State of the European Economic Area, the Republic of Turkey or the Swiss

Confederation, or with an organisation of the European Union or an intergovernmental organisation of which Austria is a member, or with any similar body, must be accredited in their entirety, whereas all other previous service periods are taken into account only up to a maximum of 10 years and in so far as they are relevant.

Creator: European Court of Justice (ECJ)

Verdict at: 2019-05-08

Case number: C-24/17