

SUMMARY

ECJ 20 April 2023, case C-650/21 (Landespolizeidirektion Niederösterreich and Finanzamt Österreich), Age Discrimination

***FW, CE – v – Landespolizeidirektion Niederösterreich and Finanzamt
Österreich, Austrian case***

Summary

Refinements of Austrian salary grading system found discriminatory.

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 under which the grading of a civil servant is fixed on the basis of his or her seniority in the remuneration scale of a previous remuneration system found to be discriminatory in so far as that system, for the purposes of determining that seniority, allowed only accreditable periods prior to the recruitment of the civil servant which were completed from the age of 18 to be taken into account, to the exclusion of those completed before that age, where that legislation provides that a correction of the civil servant's accreditable periods completed prior to his or her recruitment, as initially calculated, is to be made by determining a comparison reference date, for the purposes of which, in order to determine that seniority, accreditable periods prior to recruitment which were completed before that civil servant's 18th birthday are henceforth taken into account where, first, as regards periods completed after the 18th birthday, only 'other periods' of which half must be taken into account are taken into account and, second, those 'other periods' are increased from three to seven years, but are taken into account only in so far as they exceed four years?

Must EU law be interpreted as precluding national legislation which provides, as regards civil servants in respect of whom a procedure intended to redefine their position in the remuneration scale was pending on the date of publication of a legislative amendment to the remuneration system including that scale, that remuneration is to be recalculated in accordance with the new provisions relating to the comparison reference date, those provisions containing new limitations regarding the maximum length of accreditable periods, whereas no such calculation is made for civil servants in respect of whom a procedure with the same purpose, initiated previously, has already been closed by a final decision, based on a reference date determined more favourably under the previous remuneration system whose provisions, considered by national courts as being discriminatory, have been disapplied in direct application of the principle of equal treatment laid down by EU law?

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 which provides that periods of apprenticeship undertaken with a national local authority are to be taken into account in their entirety, for the purposes of determining the comparison reference date, only where the civil servant concerned was recruited by the State after a certain date, whereas half of periods of apprenticeship are to be taken into account, in being subject to a flat-rate deduction, where the civil servant concerned was recruited by the State before that date?

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 under which the grading of a civil servant is fixed on the basis of his or her seniority in the remuneration scale of a previous remuneration system found to be discriminatory in so far as that system, for the purposes of determining that seniority, allowed only accreditable periods prior to the recruitment of the civil servant which were completed from the age of 18 to be taken into account, to the exclusion of those completed before that age, where that legislation provides that a correction of the civil servant's accreditable periods completed prior to his or her recruitment, as initially calculated, is to be made by determining a comparison reference date, for the purposes of which, in order to determine that seniority, accreditable periods prior to recruitment which were completed before that civil servant's 18th birthday are henceforth taken into account where, first, as regards periods completed after the 18th birthday, only 'other periods' of which half must be taken into account are taken into account and, second, those 'other periods' are increased from three to seven years, but are taken into account only in so far as they exceed four years.

The principle of equal treatment, as enshrined in Article 20 of the Charter of Fundamental Rights, and the principle of legal certainty must be interpreted as precluding national legislation which provides, as regards civil servants in respect of whom a procedure intended to redefine their position in the remuneration scale was pending on the date of publication of a legislative amendment to the remuneration system including that scale, that remuneration is to be recalculated in accordance with the new provisions relating to the comparison reference date, those provisions containing new limitations regarding the maximum length of creditable periods, with the result that discrimination on grounds of age contrary to Articles 1, 2 and 6 of Directive 2000/78, read in conjunction with Article 21 of the Charter of Fundamental Rights, is not eliminated, whereas no such calculation is made for civil servants in respect of whom a procedure with the same purpose, initiated previously, has already been closed by a final decision, based on a reference date determined more favourably under the previous remuneration system whose provisions, considered by national courts as being discriminatory, have been disapplied in direct application of the principle of equal treatment laid down by EU law.

Articles 1, 2 and 6 of Directive 2000/78, read in conjunction with Article 21 of the Charter of Fundamental Rights, must be interpreted as not precluding national legislation which provides that periods of apprenticeship undertaken with a national local authority are to be taken into account in their entirety, for the purposes of determining the comparison reference date, only where the civil servant concerned was recruited by the State after a certain date, whereas half of periods of apprenticeship are to be taken into account, in being subject to a flat-rate deduction, where the civil servant concerned was recruited by the State before that date.

Creator: European Court of Justice (ECJ)

Verdict at: 2023-04-20

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