Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

16 January 2014*

(Request for a preliminary ruling — Equal treatment in employment and occupation — Article 21 of the Charter of Fundamental Rights of the European Union — Article 45 TFEU — Directive 2000/78/EC — Difference in treatment on grounds of age — Determination of the reference date for the purposes of advancement on the salary scale — Limitation period — Principle of effectiveness)

In Case C-429/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht Innsbruck (Austria), made by decisions of 28 August 2012 and 16 August 2013, received at the Court on 21 September 2012 and 22 August 2013 respectively, in the proceedings

Siegfried Pohl

v

ÖBB-Infrastruktur AG,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, J.L. da Cruz Vilaça, G. Arestis, J.-C. Bonichot and A. Arabadjiev (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 11 July 2013,

after considering the observations submitted on behalf of:

— Mr Pohl, by C. Schöffthaler and U. Willi, Rechtsanwälte,

— ÖBB-Infrastruktur AG, by C. Wolf, Rechtsanwalt,

— the Austrian Government, by G. Hesse, acting as Agent,

— the Belgian Government, by M. Jacobs and L. Van den Broeck, acting as Agents,

— the Spanish Government, by A. Rubio González, acting as Agent,

— the European Commission, by V. Kreuschitz, D. Martin and F. Schatz, acting as Agents,

* Language of the case: German.

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the general European Union law principles of equal treatment, the prohibition of all discrimination on grounds of age and the protection of legitimate expectations, of Article 21 of the Charter of Fundamental Rights of the European Union ('the Charter'), of Article 45 TFEU and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303 p. 16).

2 The request has been made in proceedings between Mr Pohl and his former employer, ÖBB-Infrastruktur AG ('ÖBB'), concerning the fixing, at the time of his recruitment to a permanent post on 1 July 1977, of the reference date for the purposes of advancement on the salary scale connected with that post and the consequences of the determination of that date for his classification on that scale and for the calculation of his salary and retirement pension.

Legal context

European Union law

3 In the words of Article 1 of Directive 2000/78, '[t]he purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment'.

4 Article 2 of the directive, entitled 'Concept of discrimination', provides:

'1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

…'

5 Article 3 of that directive, entitled 'Scope', states in paragraph 1:

'Within the limits of the areas of competence conferred on the [European Union], this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

(a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

…

(c) employment and working conditions, including dismissals and pay;

…’

6 According to paragraph 1 of Article 6 of that directive, entitled ‘Justification of differences of treatment on grounds of age’:

‘Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;

(b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;

…’

Austrian law

7 Paragraph 3 of the 1963 Regulation on remuneration in the federal rail transport sector (Bundesbahn-Besoldungsordnung 1963 (BGBl. 170/1963)), entitled ‘Reference date for advancement’, provides:

‘(1) The reference date for advancement is to be ascertained by adding in before the date of engagement – excluding periods prior to the eighteenth birthday and having regard to the limiting provisions in subparagraphs 4 to 7:

(a) the periods specified in subparagraph 2, in full,

(b) other periods, to the extent of one half.

(2) The periods prior to the date of engagement to be credited under subparagraph 1(a) are:

1. time spent in employment representing at least half of the time prescribed for full-time employees in the context of an employment relationship within the Austrian rail transport sector. The same applies to time spent in employment in the context of an employment relationship within the rail transport sector of a *Land* or the private rail transport sector, with respect to which staff regulations similar to those of officials of the Austrian railways are applicable.

…’

8 Paragraph 1480 of the Civil Code (Allgemeines Bürgerliches Gesetzbuch) provides:

‘Claims for backdated annual benefits, in particular for interest, … shall lapse after three years; the right as such shall be time-barred for non-use for 30 years.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

9 On 25 November 1974, Mr Pohl joined the legal predecessor of ÖBB. He was permanently employed by that company as from 1 July 1977. At that time, the reference date for the purposes of Mr Pohl's advancement on the salary scale connected with that post was fixed, by that company, at 12 November 1971. For that purpose, the periods of service completed in that company were deemed to precede his permanent engagement in their entirety. The other periods of service completed after reaching the age of 18 in different undertakings situated in Austria were taken into account only to the extent of one half. The periods of service completed before reaching the age of 18 were not taken into account when the reference date was determined.

10 After retiring provisionally on 4 March 2002, Mr Pohl retired definitively on 4 March 2005. Following his final advancement, which took place on 1 January 2002, Mr Pohl was classified in salary scale 15.

11 By an action brought on 2 August 2011 against ÖBB before the Landesgericht Innsbruck (Regional Court, Innsbruck), Mr Pohl sought a declaration that he had reached salary scale 16 on 1 January 2002. He requested, in the alternative, that ÖBB be ordered to pay him, from 1 January 2002 to 4 March 2002, the difference in salary between scale 15 and scale 16 and, as from 5 March 2002, the difference between the pension benefits which he had received and those payable under scale 16.

12 Mr Pohl claimed, in essence, that the periods of service which he had completed before reaching the age of 18 and those completed after reaching the age of 18 and up to 24 November 1974 ought to have been taken into account in full in the determination of the reference date for the purposes of his advancement on the salary scale connected with the post which he held in ÖBB. If those periods of employment had been taken into account for the purposes of fixing that reference date, Mr Pohl would, in accordance with the relevant provisions of the 1963 Regulation on remuneration in the federal rail transport sector, have been classified in salary scale 16 before his provisional retirement on 4 March 2002.

13 Mr Pohl's action was dismissed at first instance by the Landesgericht Innsbruck.

14 Mr Pohl appealed against that decision to the referring court.

15 With regard to the determination of the reference date for the purposes of Mr Pohl's advancement on the salary scale, the referring court considers that it is necessary to make a distinction based on the point in time at which he reached the age of 18. The exclusion of periods of service preceding that date for the purpose of calculating the reference date at the time of his permanent employment might, in its view, constitute direct discrimination based on age. Taking into account previous periods of service only to the extent of one half from the age of 18 until 24 November 1974 might be contrary to the general European Union law principle of equal treatment and to the prohibition of discrimination set out in Article 45 TFEU.

16 The referring court also notes that, by reason of the limitation period applicable under national law, Mr Pohl's right to seek a reassessment of the reference date is time-barred. From this it infers that, under national law, the rights pursued by Mr Pohl in the present case with a view to obtaining payment of additional remuneration and pension sums are also time-barred.

17 In those circumstances, the Oberlandesgericht Innsbruck decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does European Union law as it stands at present, in particular

1. the general principle in European Union law of equal treatment,

2. the general principle of the prohibition of discrimination on grounds of age within the meaning of Article 6(3) TEU and Article 21 of the [Charter],

3. the prohibition of discrimination in connection with freedom of movement for workers in Article 45 TFEU,

4. Directive [2000/78],

preclude national rules – partly legislative, partly in collective agreements – which by agreement are incorporated into an individual contract of employment, and under which previous periods of service of employees in the rail transport sector are not taken into account at all if they were acquired before reaching the age of 18, and if they were acquired after reaching the age of 18, where they were not completed with a "quasi-public" undertaking in national territory or with the defendant national employer itself, are taken into account only to the extent of one half, regardless of the skills and knowledge acquired by the employee in the particular case?

(2) If the answer to Question 1 is in the affirmative, is it relevant in calculating the pay outstanding, taking account of previously disregarded previous periods of service (in full up to reaching the age of 18 and as regards the second half from reaching the age of 18 to the claimant's entry into the service of the defendant) in conformity with European Union law, that the previous periods of service in the calculation were acquired in the period from 1 December 1965 to 24 November 1974, in other words long before the Republic of Austria's accession to the European Union and before the first judgment on the principle of equal treatment in European Union law?

(3) If the answer to Question 1 is in the affirmative, does European Union law as it stands at present, in particular the principle of effectiveness, preclude national limitation provisions under which the claim of an employee, subsequently a pensioner, against his employer for payment of additional pay, and subsequently payment of additional pension sums, deriving from the taking into account, in conformity with European Union law within the meaning of Question 1, of previous periods of service abroad and of those acquired before reaching the age of 18 – a claim which he did not have under national law and objectively could not bring until delivery of the judgments in Case C-195/98 *Österreichischer Gewerkschaftsbund* [2000] ECR I-10497 on 30 November 2000 and Case C-88/08 *Hütter* [2009] ECR I-5325 on 18 June 2009 – would be time-barred in its entirety?

(4) If the answer to Question 1 is in the affirmative, is an employer in the rail transport sector with approximately 40 000 employees and a multi-level hierarchically articulated and territorially comprehensive organisation, under European Union law as it stands at present, in particular the horizontal effect of the general European Union law principle of equal treatment and/or the prohibition of discrimination in connection with freedom of movement for workers, under a duty of care to inform his employees and employees' representatives of judgments of the Court of Justice, also published in the daily press, which make it appear that a system of accrediting previous periods of service hitherto practised by the employer is contrary to European Union law, a duty which may lead, inter alia, to payment of additional pay?'

18 By letter of 17 July 2013, the referring court sent to the Court an order of the Oberster Gerichtshof (Supreme Court) of 27 June 2013, by which the latter court decided to refer to the Court several questions for a preliminary ruling concerning a matter similar to that in issue in the present case.

19 After receiving that letter, the Court requested the referring court to inform it whether it wished to amend or withdraw, in part or in whole, the questions referred as set out in its order of 28 August 2012.

20 In response to that request, the referring court, by order for reference lodged at the Court Registry on 22 August 2013, referred an additional question for a preliminary ruling, which is worded as follows:

‘Does European Union law currently in force, in particular

1. Directive [2000/78],

2. the general principle of effectiveness,

3. the general principle of the protection of legitimate expectations,

preclude national legislation of 27 December 2011, retroactively applicable from 1 January 2004, which abolishes rights based on European Union law and, in particular, on the judgment in [Case C-88/08 *Hütter*], to have account taken, in the absence of discrimination based on age, of periods of service completed before the age of 18, and the resulting rights to remuneration, by extending, through the fixing of a new reference date for the purposes of advancement, at the same time by one year the period allowing access to a higher salary scale in each of the first three salary scales?’

The third question

21 By its third question, which should be addressed first, the referring court asks, in essence, whether European Union law, and, in particular, the principle of effectiveness, precludes national legislation, such as that at issue in the main proceedings, which makes the right of an employee to seek a reassessment of the periods of service which must be taken into account in order to fix the reference date for the purposes of advancement subject to a 30-year limitation period, which starts to run from the conclusion of the agreement fixing that reference date or from the classification in a wrong salary scale.

22 That court is unsure, in particular, whether it must be acknowledged that that limitation period starts to run, not from the conclusion of the agreement fixing the reference date or from the classification in a wrong salary scale, but from the respective dates of delivery of the above judgments in *Österreichischer Gewerkschaftsbund* and *Hütter*.

23 It is settled case-law that, in the absence of European Union rules in the field, it is for the national legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from European Union law, provided that such rules are not less favourable than those governing similar national actions (principle of equivalence) and that they do not render practically impossible or excessively difficult the exercise of rights conferred by European Union law (principle of effectiveness) (see, inter alia, Joined Cases C-89/10 and C-96/10 *Q-Beef and Bosschaert* [2011] ECR I-7819, paragraph 32 and the case-law cited).

24 In this regard, it should be noted that European Union law does not provide for rules relating to periods within which actions must be brought in regard to the principle of equal treatment.

25 It follows that it is for the internal legal order of each Member State concerned to lay down such detailed procedural rules, subject to respect for the principles of equivalence and effectiveness.

26 In relation to the principle of equivalence, it should be borne in mind that, according to settled case-law, this requires that all the rules applicable to actions apply without distinction to actions alleging infringement of European Union law and to similar actions alleging infringement of national law (Case C-542/08 *Barth* [2010] ECR I-3189, paragraph 19 and the case-law cited).

27 In the present case, it is clear from the file submitted to the Court that the 30-year limitation period under national law applies irrespective of whether the infringement of the law invoked comes within the scope of European Union law or of national law.

28 Consequently, such a limitation rule cannot be considered to be contrary to the principle of equivalence.

29 As regards the principle of effectiveness, the Court has stated that it is compatible with European Union law to lay down reasonable time-limits for bringing proceedings in the interests of legal certainty to the extent that such time-limits are not liable to make it in practice impossible or excessively difficult to exercise the rights conferred by European Union law (see, to that effect, *Barth*, paragraph 28 and the case-law cited).

30 With regard to the question whether the respective dates of delivery of the above judgments in *Österreichischer Gewerkschaftsbund* and *Hütter* affect the starting point of a limitation period fixed by national law, it should be noted that the interpretation which, in the exercise of the jurisdiction conferred on it by Article 267 TFEU, the Court gives to a rule of European Union law clarifies and defines, where required, the meaning and scope of that rule as it must be, or ought to have been, understood and applied from the time of its entry into force. In other words, a preliminary ruling does not create or alter the law, but is purely declaratory, with the consequence that in principle it takes effect from the date on which the rule interpreted entered into force (Case C-2/06 *Kempter* [2008] ECR I-411, paragraph 35 and the case-law cited).

31 So far as concerns the starting point of the limitation period, the Court has pointed out that this, in principle, is a matter for national law and that the fact that the Court may have ruled that the breach of European Union law has occurred generally does not affect the point at which that period starts to run (see, to that effect, *Q-Beef and Bosschaert*, paragraph 47 and the case-law cited).

32 Consequently, the respective dates of delivery of the above judgments in *Österreichischer Gewerkschaftsbund* and *Hütter* do not affect the starting point of the limitation period at issue in the case in the main proceedings and are therefore irrelevant for the purposes of determining whether, in the main proceedings, the principle of effectiveness has been respected.

33 As is apparent from the order for reference, in accordance with national law, that starting point corresponds to the date of conclusion of the agreement on the basis of which the reference date was fixed or to the date of the classification in a wrong salary scale, namely, in the case in the main proceedings, 25 November 1974. The referring court points out in this regard that, under national law, Mr Pohl's right to seek a reassessment of the reference date has been time-barred since 24 November 2004, that is to say, well before proceedings were brought in the main action on 2 August 2011.

34 It cannot be disputed that such a period constitutes a reasonable period for bringing proceedings in the interests of legal certainty, within the terms of the case-law referred to in paragraph 29 of the present judgment.

35 Furthermore, in view of the fact that Mr Pohl's action concerns, in essence, the lawfulness of his final advancement on the salary scale, which took place on 1 January 2002, it must be held that, pursuant to national law, he still had almost three years to bring his action against the decision relating to his final advancement on that scale.

36 Moreover, assuming that Mr Pohl was able to base his claims on Article 45 TFEU or on Directive 2000/78, it must be noted that, first, that article could have been relied on before the Austrian courts as of 1 January 1995, the date on which the Republic of Austria acceded to the European Union, that is to say, during a period of almost 10 years before the expiry of the limitation period at issue in the main

proceedings and, secondly, the period set for implementing Directive 2000/78 expired on 3 December 2003, which left Mr Pohl a period of almost one year in order to bring an action with a view to asserting his rights before those courts. In those circumstances, it must be held that, in the case in the main proceedings, the 30-year limitation period provided for by national law, which started to run from the conclusion of the agreement on the basis of which the reference date was fixed or from the classification in a wrong salary scale, was not such as to make it practically impossible or excessively difficult for Mr Pohl to exercise the rights which he may derive from European Union law.

37 In the light of the foregoing considerations, the answer to the third question is that European Union law, and, in particular, the principle of effectiveness, does not preclude national legislation, such as that at issue in the main proceedings, making the right of an employee to seek a reassessment of the periods of service which must be taken into account in order to fix the reference date for the purposes of advancement subject to a 30-year limitation period, which starts to run from the conclusion of the agreement on the basis of which that reference date was fixed or from the classification in an incorrect salary scale.

38 In the light, first, of the answer to the third question and, second, of the referring court's finding that Mr Pohl's right to seek a reassessment of the reference date and, consequently, his action against the decision relating to his final advancement on the salary scale have been, in accordance with the 30-year limitation period provided for by national law, time-barred since 24 November 2004, there is no need to answer the other questions referred for a preliminary ruling.

Costs

39 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

European Union law, and, in particular, the principle of effectiveness, does not preclude national legislation, such as that at issue in the main proceedings, making the right of an employee to seek a reassessment of the periods of service which must be taken into account in order to fix the reference date for the purposes of advancement subject to a 30-year limitation period, which starts to run from the conclusion of the agreement on the basis of which that reference date was fixed or from the classification in an incorrect salary scale.

[Signatures]