

**Parties to the main proceedings**

*Applicant:* Flora May Reyes

*Defendant:* Migrationsverket

**Re:**

Request for a preliminary ruling — Kammarrätten i Stockholm — Migrationsöverdomstolen — Interpretation of Article 2(2)(c) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77) — Right of resident in a Member State of a national of a third country aged over 21 years, who is a direct descendant of a person having the right of residence in that Member State — Notion of ‘dependent’ — Obligation on the direct descendant to prove that he has tried unsuccessfully to obtain employment or applied to the authorities of the State of origin for financial support to meet his needs, or otherwise tried to support himself.

**Operative part of the judgment**

1. Article 2(2)(c) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, must be interpreted as meaning that a Member State cannot require a direct descendant who is 21 years old or older, in circumstances such as those in the main proceedings, in order to be regarded as dependent and thus come within the definition of a family member under Article 2(2)(c) of that provision, to have tried unsuccessfully to obtain employment or to obtain subsistence support from the authorities of his country of origin and/or otherwise to support himself.
2. Article 2(2)(c) of Directive 2004/38 must be interpreted as meaning that the fact that a relative — due to personal circumstances such as age, education and health — is deemed to be well placed to obtain employment and in addition intends to start work in the Member State does not affect the interpretation of the requirement in that provision that he be a ‘dependant’.

(<sup>1</sup>) OJ C 355, 17.11.2012

**Judgment of the Court (Second Chamber) of 16 January 2014 (request for a preliminary ruling from the Oberlandesgericht Innsbruck — Austria) — Siegfried Pohl v ÖBB-Infrastruktur AG**

(Case C-429/12) (<sup>1</sup>)

*(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)*

(2014/C 85/13)

*Language of the case:* German

**Referring court**

Oberlandesgericht Innsbruck

**Parties to the main proceedings**

*Applicant:* Siegfried Pohl

*Defendant:* ÖBB-Infrastruktur AG

**Re:**

Request for a preliminary ruling — Oberlandesgericht Innsbruck — Interpretation of Article 6(3) TEU, Article 21 of the Charter of Fundamental Rights of the European Union, Article 45 TFEU and 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) — Temporal scope — Period before accession — Remuneration of employees in the rail transport sector — National legislation and collective agreement excluding the taking into account of periods of employment completed before reaching the age of 18 for the purpose of determining remuneration — Taking into account of half of the employee’s periods of employment completed after reaching the age of 18, except in the case of professional experience acquired with a ‘quasi-public’ national undertaking or with the national railway company — Limitation period.

**Operative part of the judgment**

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.

(<sup>1</sup>) OJ C 9, 12.1.2013.