



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

11 November 2014*

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment in employment and occupation — Article 2(1) and (2)(a) — Article 6(1) — Discrimination based on age — National legislation under which inclusion of periods of study and service completed before the age of 18 for the purpose of determining remuneration is subject to an extension of the periods for advancement — Justification — Whether appropriate for the purpose of achieving the objective pursued — Possibility of challenging the extension of the periods for advancement)

In Case C-530/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgerichtshof (Austria), made by decision of 16 September 2013, received at the Court on 8 October 2013, in the proceedings

Leopold Schmitzer

v

Bundesministerin für Inneres,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, L. Bay Larsen, T. von Danwitz, C. Vajda, S. Rodin and K. Jürimäe, Presidents of Chambers, A. Rosas, E. Juhász, A. Borg Barthet, J. Malenovský, A. Arabadjiev (Rapporteur), M. Safjan and F. Biltgen, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the European Commission, by B.-R. Killmann and D. Martin, acting as Agents,

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

gives the following

* Language of the case: German.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 21 of the Charter of Fundamental Rights of the European Union ('the Charter') and of Articles 2, 6(1) and 16 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 Schmitzer and the Bundesministerin für Inneres (Federal Minister for the Interior) concerning the legality of the system for remuneration of public servants adopted by the Austrian legislature with a view to ending age-based discrimination.

Legal context

Directive 2000/78

- 3 Article 1 of Directive 2000/78 provides that the purpose of that 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 that directive states:
 - '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 Under Article 3(1)(c) of the directive, the latter applies to all persons, as regards both the public and private sectors, including public bodies, in relation to, inter alia, employment and working conditions, including pay.
- 6 Article 6 of Directive 2000/78 reads as follows:
 - '1. 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;

...'

- 7 Article 9 of Directive 2000/78, entitled 'Defence of rights', provides in paragraph 1:

'Member States shall ensure that judicial and/or administrative procedures, including, where they deem it appropriate, conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.'

- 8 Article 16 of Directive 2000/78, entitled 'Compliance', provides:

'Member States shall take the necessary measures to ensure that:

...

- (b) any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements ... are, or may be, declared null and void or are amended.'

Austrian law

The system prior to the Amending Law

- 9 In the version in force until its retroactive amendment by the Federal Law of 30 August 2010 amending the 1979 Law on the status of civil servants, the 1956 Law on salaries, the 1948 Law on contract workers and the Law on the status and function of judges and prosecutors (BGBl. I, 82/2010), applicable from 1 January 2004 to 30 August 2010 ('the Amending Law'), Paragraph 8 of the 1956 Law on salaries (Gehaltsgesetz 1956, BGBl. 54/1956; 'the GehG') provided a general rule of advancement every two years.
- 10 In the version in force on 31 December 2003, Paragraph 12(1) of the GehG, as amended by the 2002 Law on deregulation and the public service (Deregulierungsgesetz-Öffentlicher Dienst 2002, BGBl. I, 119/2002), provided:

'Excluding periods that the person concerned has completed before reaching the age of 18, and without prejudice to the restrictions set out in subparagraphs 4 to 8, the reference date to be taken into account for purposes of advancement by an incremental step shall be calculated by counting back from the day of appointment:

1. in respect of the periods specified in subparagraph 2, which shall be taken into account in their entirety;
2. in respect of other periods
 - (a) which satisfy the criteria in subparagraphs 3 or 3a, which shall be taken into account in their entirety
 - (b) which do not satisfy the criteria in subparagraphs 3 or 3a, which shall be taken into account to the extent of 50%, on condition that they do not exceed three years.'

The Amending Law

11 The Amending Law was designed to ensure that the federal rules governing the computation of periods prior to entry into service would be in compliance with Directive 2000/78, as interpreted by the Court of Justice in the judgment in *Hütter* (C-88/08, EU:C:2009:381), in which the Court held that national legislation which, in order not to treat general education less favourably than vocational education and to promote the integration of young apprentices into the labour market, excluded periods of employment completed before the age of 18 from being taken into account for the purpose of determining the incremental step at which contractual public servants of a Member State are graded, was incompatible with Articles 1, 2 and 6 of Directive 2000/78.

12 That Law, in particular, amended, with retroactive effect as from 1 January 2004, Paragraphs 8 and 12 of the GehG.

13 Under the title ‘Advancement’, Paragraph 8 of the GehG, as amended by the Amending Law, states as follows in subparagraph 1:

‘Advancement shall be determined on the basis of a reference date. Unless otherwise provided in this paragraph, the period required for advancement to the second incremental step for each job category shall be five years and two years for other incremental steps.’

14 Under the heading ‘Advancement reference date’, Paragraph 12 of the GehG, as amended by the Amending Law, provides:

‘(1) Subject to the restrictions set out in subparagraphs 4 to 8, the reference date to be taken into account for purposes of advancement by an incremental step shall be calculated by counting backwards from the date of appointment for periods after 30 June of the year in which nine school years were completed or ought to have been completed after admission to the first level of education:

1. the periods specified in subparagraph 2 shall be taken into account in their entirety;
2. other periods
 - (a) which satisfy the criteria in subparagraphs 3 or 3a shall be taken into account in their entirety;
 - (b) which do not satisfy the criteria in subparagraphs 3 and 3a
 - (aa) shall be taken into account in their entirety for three years and
 - (bb) shall be taken into account to the extent of 50% for a maximum of three additional years.

...

(3) The periods referred to in subparagraph 1, point 2, during which the civil servant engaged in an activity or further education may, in the public interest, be taken into account in their entirety to the extent to which such activity or studies are of particular interest for the service. ...

...’

15 Paragraph 113(10) to (12) of the GehG, as amended by the Amending Law, provides:

‘(10) The reference date to be taken into account for purposes of advancement by an incremental step and the resulting remuneration status may be recalculated in accordance with Paragraphs 8 and 12 [of the GehG, as amended by the Amending Law] only on request and only in cases where the existing remuneration status is determined by the reference date. Persons receiving periodic benefits under the 1965 Law on pensions may also submit an application.

(11) For persons who do not submit an application in accordance with subparagraphs 10 and 12 or for whom the reference date does not have to be recalculated in accordance with subparagraph 10,

1. Paragraphs 8 and 12(1) [of the GehG] shall continue to apply in the version in force on 31 December 2003 ...

...

(12) Applications under subparagraph 10 must be submitted on the form to be drawn up by regulation of the Federal Chancellor. Persons authorised to submit an application who, prior to the date of enactment of [the Amending Law], had requested a recalculation of their reference date or of their remuneration status on the basis of periods prior to their entry into service which they had completed before the age of 18 or who had requested a salary adjustment on that ground shall be invited to submit a new application using the form referred to above ...’

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

16 Mr Schmitzer is an official at the Bundesministerium für Inneres (Federal Ministry of the Interior). On 22 January 2013, he submitted a request for a review of his advancement reference date in order that account could be taken of periods of training and service, within the meaning of the applicable national legislation, which he had completed before the age of 18. While the law on the date of his recruitment did not allow account to be taken of those periods, Paragraph 113 of the GehG, as amended by the Amending Law, now makes provision to that effect.

17 By decision of 28 January 2013, the Bundesministerin für Inneres fixed the new reference date at 1 July 1975 in accordance with Mr Schmitzer’s request. In the grounds of that decision, it is stated that Mr Schmitzer’s remuneration status is also subject to Paragraph 8 of the GehG, as amended by the Amending Law, which makes advancement to the second incremental step subject to completion of a period of five years on the first step.

18 On 26 February 2013, Mr Schmitzer submitted a request for a review of his remuneration status under Paragraph 8 of the GehG, in the version prior to the Amending Law, in order to benefit from advancement to a higher step every two years as from that reference date.

19 On 4 April 2013, the Bundesministerin für Inneres turned down that request.

20 Mr Schmitzer brought an action challenging that decision before the Verwaltungsgerichtshof (Administrative Court). That court is uncertain whether a legislative amendment which introduces a new non-discriminatory method of determining the reference date to be taken into account for the advancement of civil servants may, concurrently, provide for an extension of the periods which must be completed in order to move from one incremental step to the next. That court is uncertain whether such an extension is compatible with EU law in that it applies solely to civil servants who request a review of the reference date taken into account for their incremental step advancement and remuneration status, to the exclusion of those who do not make such a request and those for whom a change to that date is irrelevant.

21 In those circumstances, the Verwaltungsgerichtshof decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- (1) Does it constitute — for the moment notwithstanding Article 52(1) of the [Charter] and Article 6 of Directive [2000/78] — (direct) unequal treatment on grounds of age for the purposes of Article 21 of the Charter and Article 2(1) and (2)(a) of the directive if, upon the introduction of a non-discriminatory system of salary advancement for new civil servants, an old civil servant who suffered discrimination under the former legal situation (as a result of the ineligibility, for advancement purposes, of periods completed before the age of 18) may make a request to opt in to the new system and thereby obtain an advancement reference date calculated on a non-discriminatory basis, but the effect of granting such a request under national law is that, because of the slower advancement provided for in the new system, his remuneration status (and thus ultimately the salary payable to him) does not improve, despite the improvement of the advancement reference date, to such an extent that he acquires the same remuneration status as an old civil servant afforded favourable treatment in a discriminatory manner under the former legal situation (who is not required to demonstrate comparable periods before, but after the age of 18, which were already credited to him under the former legal situation) who does not feel compelled to opt in to the new system?
- (2) If so, may a civil servant — in the absence of a justification in accordance with Article 52(1) of the Charter and Article 6 of Directive [2000/78] (see in particular Question 3 below) — rely on the direct applicability of Article 21 of the Charter and Article 2 of [that] directive in proceedings to determine remuneration status even if he has previously obtained an improvement of the advancement reference date in the new system by making a request to that effect?
- (3) If Question 1 is answered in the affirmative, is a distinction, which continues to be maintained upon the introduction of a non-discriminatory system for new civil servants, in respect of the remuneration status of old civil servants who are afforded favourable treatment and who do not opt in, on the one hand, and old civil servants who still suffer discrimination despite opting in, on the other, justified in accordance with Article 52(1) of the Charter and Article 6 of [that] directive, as a transitional phenomenon, on grounds of procedural economy, or protection of established rights or legitimate expectations even where:
 - (a) the national legislature is not, in regulating the advancement system, required to obtain the approval of parties to the collective bargaining agreement and is obliged merely to act within the fundamental limits of the principle of protection of legitimate expectations, which does not necessitate the full protection of established rights in the form of the complete retention of the earlier system for old civil servants who are afforded favourable treatment and who do not opt in;
 - (b) the national legislature would also have been free, in this connection, to establish equality among old civil servants by crediting periods before the age of 18 whilst retaining the earlier rules on advancement for old civil servants who previously suffered discrimination;
 - (c) the associated administrative burden would be considerable on account of the large number of requests to be expected but, as far as its expenditure is concerned, does not come anywhere near the total amount of earnings lost and to be lost in future by the civil servants who suffer discrimination in comparison with the civil servants who are afforded favourable treatment;
 - (d) the transitional periods with the continued existence of unequal treatment between old civil servants last many decades and will also affect the vast majority of all civil servants for a very long time (as a result of the general “freeze on recruitment” of new civil servants in a public-law employment relationship);

- (e) there was a retroactive introduction of the system that impaired, to the detriment of the civil servant, the legal situation which had to be implemented, having regard to the primacy of EU law, at least between 1 January 2004 and 30 August 2010 and was more favourable to the civil servant, which the civil servant had requested be applied to his case even before the amending law was adopted?
- (4) If Questions 1 or 2 are answered in the negative or Question 3 is answered in the affirmative:
- (a) Does legislation which provides for a longer advancement period for periods of employment at the beginning of the career and thus makes advancement to the next salary grade more difficult constitute indirect unequal treatment on grounds of age?
 - (b) If so, is it appropriate and necessary in the light of the small amount of professional experience at the beginning of the career?
- (5) If Question 3 is answered in the affirmative:
- (a) Does legislation which credits the full value of “other periods” for up to three years, and half the value of such periods for up to a further three years, even where they are not for the purposes of either school education or gaining professional experience, constitute discrimination on grounds of age?
 - (b) If so, is it justified in order to avoid a deterioration in the remuneration status of civil servants (who clearly also include new civil servants) who do not have suitable eligible periods before the age of 18 even though eligibility also covers other periods after the age of 18?
- (6) If Question 4(a) is answered in the affirmative and Question 4(b) is answered in the negative and, at the same time, Question 3 is answered in the affirmative or Question 5(a) is answered in the affirmative and Question 5(b) in the negative:

Do the discriminatory characteristics of the new rules which then exist mean that the unequal treatment of old civil servants is no longer justified as a transitional phenomenon?’

Consideration of the questions referred

Preliminary observations

- 22 By its questions the referring court asks the Court of Justice to interpret the principle of non-discrimination on grounds of age, enshrined in Article 21 of the Charter and given specific expression by Directive 2000/78.
- 23 In accordance with the Court’s case-law, where they adopt measures which come within the scope of Directive 2000/78, which gives specific expression, in the domain of employment and occupation, to the principle of non-discrimination on grounds of age, the Member States must respect that directive (see, to that effect, judgments in *Prigge and Others*, C-447/09, EU:C:2011:573, paragraph 48, and in *Tyrolean Airways Tiroler Luftfahrt*, C-132/11, EU:C:2012:329, paragraph 22).
- 24 In those circumstances, it is appropriate to examine the questions raised in the context of a dispute, such as that in the main proceedings, between an individual and the national administration by reference to Directive 2000/78 alone.

Question 1 and 3

- 25 By Questions 1 and 3, which should be examined together, the referring court asks, in essence, whether Article 2(1) and (2)(a) and Article 6(1) of Directive 2000/78 must be interpreted as precluding national legislation which, in order to end age-based discrimination, takes into account periods of training and service prior to the age of 18 but which, at the same time, introduces — with regard to civil servants who suffered from that discrimination — a three-year extension of the period required to progress from the first to the second incremental step in each job category and each salary group.
- 26 It is necessary, first, to determine whether the national legislation under examination involves a difference in treatment within the meaning of Article 2(1) of Directive 2000/78. In this regard, it should be borne in mind that, under that provision, the ‘principle of equal treatment’ means that there must be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1 of that directive. Article 2(2)(a) of that directive states that, for the purposes of paragraph 1 of Article 2, direct discrimination occurs where one person is treated less favourably than another is, in a comparable situation, on any of the grounds referred to in Article 1 of that directive.
- 27 In the case in the main proceedings, the categories of persons relevant for the purposes of that comparison are, on the one hand, civil servants whose professional experience has, if only in part, been acquired before the age of 18 (‘civil servants disadvantaged by the previous system’), and, on the other hand, those who have acquired experience of the same nature and of comparable length after attaining that age (‘civil servants favoured by the previous system’).
- 28 Contrary to the submissions of the Austrian Government, the fact that some civil servants have decided not to invoke Paragraph 12(1) of the GehG, as amended by the Amending Law, and therefore remain subject to the system existing prior to that Law is not such as to affect the relevance of those categories of persons for the purposes of that comparison.
- 29 As regards the existence of a difference in treatment between those two categories of civil servants, it is apparent from the documents before the Court that, following the judgment in *Hütter* (EU:C:2009:381), the Austrian legislature, in adopting the Amending Law, amended the wording of Paragraph 12(1) of the GehG and established a remuneration and advancement system which allows the full experience of workers, whether acquired before or after reaching the age of 18, to be taken into account for the purpose of determining the advancement reference date. As noted by the referring court, that reference date is now determined without any age-based discrimination.
- 30 Nevertheless, it is necessary to examine whether the Amending Law continues to apply differing treatment to the two categories of civil servants concerned.
- 31 In that regard, it should be noted that civil servants disadvantaged by the previous system who request, on the basis of Paragraph 113(10) of the GehG, as amended by the Amending Law, that periods prior to their eighteenth birthday be taken into account are made subject to Paragraph 8(1) of the GehG, as amended by the Amending Law, which provides for advancement from the first to the second incremental step only after a period of five years, whereas the system existing prior to that Law provided for that advancement at the end of a two-year period.
- 32 By contrast, in accordance with Paragraph 113(11) of the GehG, as amended by the Amending Law, the reference date to be taken into account for the advancement of civil servants favoured by the previous system is recalculated only if a request is submitted, which, as noted by the referring court, those civil servants have no reason to submit. The three-year extension of the period required for advancement from the first to the second incremental step will therefore not apply to them, unlike the civil servants disadvantaged by the previous system who have made such a request.

- 33 Accordingly, by enacting Paragraph 8(1) of the GehG, as amended by the Amending Law, the Austrian legislature has introduced a provision which continues to treat civil servants disadvantaged by the previous system and those favoured by that system differently with regard to their remuneration status and corresponding salary.
- 34 In so doing, the national legislation at issue in the main proceedings not only neutralises the advantage resulting from the inclusion of periods of training and service completed before the age of 18, but also places at a disadvantage only the civil servants disadvantaged by the previous system in so far as the extension to the periods for advancement is likely to apply to them alone. Consequently, with regard to those civil servants, the adverse effects of the system existing prior to the Amending Law have not ceased entirely.
- 35 To the extent to which the three-year extension to the period required for advancement from the first to the second incremental step applies only to civil servants who completed periods before reaching the age of 18, it must be held that the national legislation at issue in the main proceedings involves a difference in treatment which is directly based on age within the meaning of Article 2(2)(a) of Directive 2000/78.
- 36 It is necessary, secondly, to examine whether that difference in treatment can be justified.
- 37 The first subparagraph of Article 6(1) of Directive 2000/78 states that Member States may provide that a difference in treatment on grounds of age is not to constitute discrimination if, within the context of national law, it is 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.
- 38 The Court has held on numerous occasions that Member States enjoy a broad discretion in their choice, not only to pursue a particular aim in the field of social and employment policy, but also in the definition of measures capable of achieving it (judgment in *Specht and Others*, C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005, paragraph 46 and the case-law cited).
- 39 According to the referring court, the legislation at issue in the main proceedings is, first and foremost, intended to establish a non-discriminatory system of remuneration and advancement. In the context of the Amending Law, the rules making the review of reference dates conditional on submission of a request by each interested party, as well as those relating to the extension of advancement periods, serve objectives of procedural economy, of respect for acquired rights and of the protection of legitimate expectations.
- 40 The Austrian Government also points out that the adoption of the Amending Law was motivated by budgetary considerations.
- 41 With regard to the objective of budgetary equilibrium pursued by the national legislation at issue in the main proceedings, it must be borne in mind that EU law does not preclude Member States from taking account of budgetary considerations at the same time as political, social or demographic considerations, provided that in so doing they observe, in particular, the general principle of the prohibition of age discrimination. In that regard, while budgetary considerations may underpin the chosen social policy of a Member State and influence the nature or extent of the measures that that Member State wishes to adopt, such considerations cannot in themselves constitute a legitimate aim within the meaning of Article 6(1) of Directive 2000/78 (judgment in *Fuchs and Köhler*, C-159/10 and C-160/10, EU:C:2011:508, paragraphs 73 and 74). This also applies to the considerations of an administrative nature mentioned by the referring court.

- 42 With regard to respect for the acquired rights and the protection of the legitimate expectations of civil servants favoured by the previous system with regard to their remuneration, it should be noted that these constitute legitimate employment-policy and labour-market objectives which can justify, for a transitional period, the maintenance of earlier pay and, consequently, the maintenance of a system that discriminates on the basis of age (see, to that effect, judgment in *Hennigs and Mai*, C-297/10 and C-298/10, EU:C:2011:560, paragraphs 90 and 92).
- 43 In the present case, in so far as Paragraph 113(11) of the GehG, as amended by the Amending Law, provides that, for persons who do not submit a request for a review of their advancement reference date or for whom that date need not be recalculated, Paragraphs 8 and 12 of the GehG, in the version in force on 31 December 2003, continue to apply, those provisions make it possible to attain the objectives of preserving the acquired rights and legitimate expectations of civil servants favoured by the previous system with regard to the maintenance of their level of remuneration. Those civil servants will not be subject to the retroactive extension of the period for advancement.
- 44 Those objectives cannot, however, justify a measure that maintains definitively, if only for certain persons, the age-based difference in treatment which the reform of a discriminatory system, of which such a measure forms part, is designed to eliminate. Such a measure, even if it is capable of ensuring the protection of acquired rights and legitimate expectations with regard to civil servants favoured by the previous system, is not appropriate for the purpose of establishing a non-discriminatory system for civil servants who were disadvantaged by that previous system.
- 45 It follows from all of the foregoing that the answer to Questions 1 and 3 is that Article 2(1) and (2)(a) and Article 6(1) of Directive 2000/78 must be interpreted as precluding national legislation which, with a view to ending age-based discrimination, takes into account periods of training and service prior to the age of 18 but which, at the same time, introduces — only for civil servants who suffered that discrimination — a three-year extension to the period required in order to progress from the first to the second incremental step in each job category and each salary group.

Question 2

- 46 By Question 2, the referring court asks, in essence, whether a civil servant who has suffered age-based discrimination — resulting from the method by which the reference date taken into account for the calculation of his advancement was fixed — must be able to rely on Article 2 of Directive 2000/78 in order to challenge the discriminatory effects of the extension of the periods for advancement, even though, at his request, that date has been revised.
- 47 That court takes the view that a civil servant disadvantaged by the previous system may be refused the opportunity to challenge the discriminatory effects of the extension of the periods for advancement on the ground that that new discrimination arises solely by reason of the fact that that civil servant requested and obtained the revision of his reference date, whereas those civil servants who completed after the age of 18 all the periods liable to be taken into account decided not to make such a request, and, accordingly, are not subject to the extension of the advancement periods.
- 48 It must be borne in mind that the Court has held that the right to equal treatment, which flows from the principle of non-discrimination on grounds of age within the meaning of Article 2 of Directive 2000/78, constitutes a right which is capable of being relied on by an individual against a public authority (see, to that effect, judgment in *Römer*, C-147/08, EU:C:2011:286, paragraph 56 and the case-law cited).

- 49 In that regard, Article 9 of Directive 2000/78 provides that Member States must ensure that all persons who consider themselves wronged by discrimination are able to assert their rights. Article 16 of that directive requires Member States to take the necessary measures to ensure that any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements are, or may be, declared null and void or are amended.
- 50 If a civil servant disadvantaged by the previous system were unable to challenge the discriminatory effects of the extension of the period for advancement by reason of the fact that he had requested and obtained the revision of the reference date taken into account for his advancement, whereas civil servants favoured by the previous system decided not to submit such a request, he would not be in a position to enforce all the rights which he derives from the principle of equal treatment guaranteed by Directive 2000/78, a situation which would be contrary to Articles 9 and 16 of that directive.
- 51 Consequently, in view of the response to Questions 1 and 3, the answer to Question 2 is that Articles 9 and 16 of Directive 2000/78 must be interpreted as meaning that a civil servant who has suffered age-based discrimination — resulting from the method by which the reference date taken into account for the calculation of his advancement was fixed — must be able to rely on Article 2 of that directive in order to challenge the discriminatory effects of the extension of the period for advancement, even though, at his request, that reference date has been revised.

Questions 4 to 6

- 52 Questions 4 to 6 were asked in the alternative, in the event of a negative reply to Questions 1 and 2 or of a reply in the affirmative to Question 3.
- 53 In view of the replies given to Questions 1 to 3, it is not necessary to answer Questions 4 to 6.

Costs

- 54 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 (Grand Chamber) hereby rules:

- 1. Article 2(1) and (2)(a) and Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding national legislation which, with a view to ending age-based discrimination, takes into account periods of training and service prior to the age of 18 but which, at the same time, introduces — only for civil servants who suffered that discrimination — a three-year extension of the period required in order to progress from the first to the second incremental step in each job category and each salary group.**
- 2. Articles 9 and 16 of Directive 2000/78 must be interpreted as meaning that a civil servant who has suffered age-based discrimination — resulting from the method by which the reference date taken into account for the calculation of his advancement was fixed — must be able to rely on Article 2 of that directive in order to challenge the discriminatory effects of the extension of the period for advancement, even though, at his request, that reference date has been revised.**

[Signatures]