

**Request for a preliminary ruling from the
Verwaltungsgerichtshof (Austria) lodged on 8 October
2013 — Georg Felber v Bundesministerin für Unterricht,
Kunst und Kultur**

(Case C-529/13)

(2014/C 15/03)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Georg Felber

Defendant: Bundesministerin für Unterricht, Kunst und Kultur

Questions referred

- Does it constitute — for the moment notwithstanding Article 52(1) of the Charter of Fundamental Rights of the European Union (‘the Charter’) and Article 6 of Council Directive 2000/78/EC ⁽¹⁾ of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (‘the directive’) — (direct) unequal treatment on grounds of age for the purposes of Article 21(1) of the Charter and Article 2(1) and (2)(a) of the directive if periods of study at an intermediate or secondary school are credited as pensionable previous periods only if they were completed after the civil servant reached the age of 18, where those pensionable previous periods are important not only for the pension entitlement but also for the amount of that pension and that pension (total pension) is regarded in national law as the continued payment of remuneration in the context of a public-law employment relationship which still exists even after the civil servant has retired?
- 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 the directive (see question 3 below) — rely on the direct applicability of Article 21 of the Charter and Article 2 of the directive in proceedings concerning an application for the crediting of pensionable previous periods even if he is not yet retired at that time, especially since under national law — if the legal position has not changed upon his retirement — the legal force of the rejection of such an application could be held against him in a pension assessment procedure or in the case of a fresh application for the crediting of those periods?

- If so, is this unequal treatment for the purposes of Article 52(1) of the Charter and Article 6(1) and (2) of the directive

- justified in order to accord to persons whose date of birth lies after the date on which school began in the year they started school or to persons who attend a type of school with an extended upper stage and, for that reason, have to attend school after the age of 18 in order to complete their studies the same conditions as to persons who complete intermediate or secondary school before the age of 18, even if the eligibility of periods of school attendance after the age of 18 are not restricted to the abovementioned cases;
- justified in order to exclude from the entitlement periods in which, in general, no gainful activity takes place and accordingly no contributions are paid? Does such a justification exist irrespective of the fact that at first no contributions are payable also in respect of periods of attendance of intermediate or secondary schools after the age of 18 and in the event of the subsequent crediting of such periods of school attendance a special pension contribution is payable in any case?
- justified because the exclusion of the crediting of pensionable previous periods completed before the age of 18 is to be regarded as equivalent to setting an ‘age for admission to an occupational social security scheme’ within the meaning of Article 6(2) of the directive?

⁽¹⁾ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation OJ L 303, p. 16.

**Request for a preliminary ruling from the
Verwaltungsgerichtshof (Austria) lodged on 8 October
2013 — Leopold Schmitzer v Bundesministerin für Inneres**

(Case C-530/13)

(2014/C 15/04)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellant: Leopold Schmitzer

Respondent authority: Bundesministerin für Inneres

Questions referred

1. Does it constitute — for the moment notwithstanding Article 52(1) of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 6 of Council Directive 2000/78/EC ⁽¹⁾ of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('the directive') — (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 the directive (see in particular Question 3 below) — rely on the direct applicability of Article 21 of the Charter and Article 2 of the 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 the directive, as a transitional phenomenon, on grounds of procedural economy, or protection of established advantages 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 advantages 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?

If Questions 1 or 2 are answered in the negative or Question 3 is answered in the affirmative:

4. (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?

If Question 3 is answered in the affirmative:

5. (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?

⁽¹⁾ 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).

**Request for a preliminary ruling from the
Verwaltungsgerichtshof (Austria) lodged on 8 October
2013 — Kornhuber and Others**

(Case C-531/13)

(2014/C 15/05)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicants: Marktgemeinde Straßwalchen, Heinrich Kornhuber, Helga Kornhuber, Karoline Pöckl, Heinz Kornhuber, Marianne Kornhuber, Wolfgang Kornhuber, Andrea Kornhuber, Alois Herzog, Elfriede Herzog, Katrin Herzog, Stefan Asen, Helmut Zopf, Ingrid Zopf, Silvia Zopf, Daniel Zopf, Maria Zopf, Anton Zopf sen., Paula Loibichler, Theresa Baumann, Josep Schindlauer, Christine Schindlauer, Barbara Schindlauer, Bernhard Schindlauer, Alois Mayrhofer, Daniel Mayrhofer, Georg Rindberger, Maria Rindlberger, Georg Rindlberger sen., Max Herzog, Romana Herzog, Michael Herzog, Markus Herzog, Marianne Herzog, Max Herzog sen., Helmut Lettner, Maria Lettner, Anita Lettner, Alois Lettner sen., Christian Lettner, Sandra Lettner, Anton Nagelseder, Amalie Nagelseder, Josef Nagelseder, Gabriele Schachinger, Thomas Schachinger, Andreas Schinagl, Michaela Schinagl, Lukas Schinagl, Michael Schinagl, Maria Schinagl, Josef Schinagl, Johann Mayr, Christine Mayr, Martin Mayr, Christian Mayr, Johann Mayr sen., Gerhard Herzog, Anton Mayrhofer, Siegfried Zieher

Defendant authority: Bundesminister für Wirtschaft, Familie und Jugend

Intervening party: Rohöl-Aufsuchungs AG

Questions referred

1. Does the trial extraction of natural gas, for a limited period and in a limited quantity, which is carried out in the context of an exploratory drilling operation designed to establish whether the permanent extraction of natural gas would be economically viable constitute an 'extraction of ... natural gas for commercial purposes' within the meaning of Annex I, no 14, to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, ⁽¹⁾ as amended by Directive 2009/31/EC of the European Parliament and of the Council (Directive 85/337)? ⁽²⁾

If the reply to Question 1 is in the affirmative, the following further questions arise:

2. Does Annex I, no 14, to Directive 85/337 preclude a provision of national law which, with regard to the extraction of natural gas, does not relate the threshold figures in Annex I, no 14, to Directive 85/337 to extraction ('Gewinnung') as such, but to 'extraction per probe' ('Förderung pro Sonde')?
3. Is Directive 85/337 to be interpreted as meaning that, in a situation such as that in the main proceedings, in which an application is being made for authorisation for the trial extraction of natural gas in the context of an exploratory drilling operation, the authority, in order to determine whether there is an obligation to carry out an environmental impact assessment, must examine, as to their cumulative effect, only all projects of the same kind, specifically, all drilling sites which have been opened in the municipal district?

⁽¹⁾ OJ 1985 L 175, p. 40.

⁽²⁾ OJ 2009 L 140, p. 114.

**Request for a preliminary ruling from the Fővárosi
Közigazgatási és Munkaügyi Bíróság (Hungary) lodged
on 9 October 2013 — Sofia Zoo v Országos
Környezetvédelmi, Természetvédelmi és Vízügyi
Főfelügyelőség**

(Case C-532/13)

(2014/C 15/06)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság