

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Reference for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 16 June 2010 — Sabine Hennigs v Eisenbahn-Bundesamt

(Case C-297/10)

(2010/C 260/03)

*Language of the case: German***Referring court**

Bundesarbeitsgericht

Parties to the main proceedings*Applicant:* Sabine Hennigs*Defendant:* Eisenbahn-Bundesamt**Questions referred**

1. Taking into account the right of parties to a collective agreement to collective bargaining which is guaranteed by primary law (now Article 28 of the Charter of Fundamental Rights of the European Union, 'CFREU'), does a collective pay agreement for public sector employees, which, as in Paragraph 27 of the Bundes-angestelltentarifvertrag (Federal collective agreement for contractual public sector employees, 'BAT') in conjunction with the Vergütungstarifvertrag (collective pay agreement) No 35 under the BAT, determines basic pay in individual salary groups by age categories, infringe the primary-law prohibition of age discrimination (now Article 21(1) of the CFREU) as given expression by Directive 2000/78/EC? ⁽¹⁾
2. If question 1 is answered in the affirmative by the Court of Justice of the European Union or by the Bundesarbeitsgericht

on the basis of the ruling of the Court of Justice in the preliminary reference proceedings:

- (a) Does the right to collective bargaining give the parties to a collective agreement the discretion to eliminate such discrimination by transferring the employees to a new collective pay structure based on job, performance and professional experience, whilst preserving the entitlements they acquired in the old tariff structure?
- (b) Must question 2 a) in any event be answered in the affirmative if the final assignment of the transferred employees to the grades within a pay group of the new collective pay structure does not depend solely on the age category attained in the old tariff structure and if the employees who are admitted to a higher grade of the new structure typically have more professional experience than the employees assigned to a lower grade?
3. If questions 2 (a) and (b) are answered in the negative by the Court of Justice of the European Union or by the Bundesarbeitsgericht on the basis of the principles set out by the Court of Justice in its preliminary ruling:

- (a) Is indirect discrimination on grounds of age justified by the fact that it is a legitimate aim to preserve acquired social entitlements and because it is an appropriate and necessary means of achieving that aim to temporarily continue to treat older and younger employees differently for the purposes of a transitional arrangement, if this difference of treatment is being gradually phased out and the only alternative in practice would be to reduce the pay of older employees?
- (b) Taking into account the right to collective bargaining and the associated autonomy in collective bargaining, must question 3(a) be answered in the affirmative if parties to a collective agreement agree on such a transitional arrangement?

4. If questions 3(a) and (b) are answered in the negative by the Court of Justice of the European Union or by the Bundesarbeitsgericht on the basis of the principles set out by the Court of Justice in its preliminary ruling:

Even taking into account the associated additional costs for the employer concerned and the right of the parties to a collective agreement to collective bargaining, must the infringement of the primary-law prohibition on age discrimination, which is inherent in a collective pay structure and which makes it invalid as a whole, always only be eliminated by taking the highest age category as a basis in each case when applying the collective pay agreements until a new system which is in conformity with Union law comes into force?

5. If question 4 is answered in the negative by the Court of Justice of the European Union or by the Bundesarbeitsgericht on the basis of the principles set out by the Court of Justice in its preliminary ruling:

Having regard to the right of the parties to a collective agreement to collective bargaining, would it be compatible with the Union law prohibition on age discrimination and the requirement for an effective sanction in the event of a breach of that prohibition, to grant the parties to a collective agreement a manageable deadline (e.g. six months) in which to retrospectively correct the invalidity of the pay structure they have agreed, and stipulate that in the event that no new structure which is in conformity with Union law is introduced within the deadline, in applying collective rules in each case the highest age category will be taken as a basis and, if so, what discretion in terms of the duration of the retrospective effect of the new structure which is in conformity with Union law could be granted to the parties to a collective agreement?

⁽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.

Reference for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 16 June 2010 — Land Berlin v Alexander Mai

(Case C-298/10)

(2010/C 260/04)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: Land Berlin

Defendant: Alexander Mai

Question referred

Taking into account the right of parties to a collective agreement to collective bargaining which is guaranteed by primary law (now Article 28 of the Charter of Fundamental Rights of the European Union, 'CFREU'), does a collective pay agreement for public sector employees, which, as in Paragraph 27 of the Bundesangestelltentarifvertrag (Federal collective agreement for contractual public sector employees, 'BAT') in conjunction with the Vergütungstarifvertrag (collective pay agreement) No 35 under the BAT, determines basic pay in individual salary groups by age categories, infringe the primary-law prohibition of age discrimination (now Article 21(1) of the CFREU) as given expression by Directive 2000/78/EC? ⁽¹⁾

⁽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.

Reference for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 29 June 2010 — Agrana Zucker GmbH v Bundesminister für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft

(Case C-309/10)

(2010/C 260/05)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Agrana Zucker GmbH

Defendant: Bundesminister für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft