ECLI:EU:C:2023:300

Provisional text

JUDGMENT OF THE COURT (Second Chamber)

20 April 2023 (*)

(Reference for a preliminary ruling – Social policy – Equal treatment in employment and occupation – Directive 2000/78/EC – Prohibition of discrimination on grounds of age – Remuneration of civil servants – Previous national legislation found to be discriminatory – Grading under a new system of remuneration by reference to seniority fixed under a previous system of remuneration – Correction of that seniority by determining a comparison reference date – Discriminatory nature of the new grading – Rule placing older officials at a disadvantage)

In Case C-650/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgerichtshof (Supreme Administrative Court, Austria), made by decision of 18 October 2021, received at the Court on 27 October 2021, in the proceedings

FW,

CE,

interveners:

Landespolizeidirektion Niederösterreich,

Finanzamt Österreich,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, M.L. Arastey Sahún (Rapporteur), F. Biltgen, N. Wahl and J. Passer, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– FW, by V. Treber-Müller, Rechtsanwältin,

– CE, by M. Riedl, Rechtsanwalt,

– the Austrian Government, by A. Posch and J. Schmoll, acting as Agents,

– 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

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 1, 2 and 6 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), read in conjunction with Article 21 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between FW and CE, on the one hand, and the Landespolizeidirektion Niederösterreich (Regional Police Directorate of Lower Austria, Austria) and the Finanzamt Österreich (Tax Office, Austria), formerly the Finanzamt Salzburg-Land (Tax Office of the Province of Salzburg, Austria) (together, 'the tax authorities'), on the other, concerning the fixing of FW's and CE's seniority in the remuneration scale for civil servants of the Federal State.

Legal context

European Union law

3 Article 1 of Directive 2000/78, entitled 'Purpose', provides:

'The 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 that 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;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, …

…'

5 Article 3 of that directive, entitled 'Scope', provides, in paragraph 1(c) of that article:

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

…

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

6 Article 6 of that directive, entitled 'Justification of differences of treatment on grounds of age', is worded 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.

…

2. Notwithstanding Article 2(2), Member States may provide that the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the grounds of sex.'

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

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

(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;

(b) any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations are, or may be, declared null and void or are amended.'

Austrian law

8 Austrian law on the remuneration and advancement of civil servants of the Federal State has been amended on a number of occasions, on account of the incompatibility of some of its provisions with EU law. According to the order for reference, the new system for the remuneration and advancement of civil servants, arising from legislative amendments enacted in 2019 and 2020, seeks to put an end to the discrimination on grounds of age resulting from the remuneration and advancement system previously in force.

The 2010 GehG

9 In order to remedy the discrimination on grounds of age resulting from the previous version of the Gehaltsgesetz (Law on Salaries), as found by the judgment of the Court of 18 June 2009, *Hütter* (C-88/08, EU:C:2009:381), Paragraph 8 of the Gehaltsgesetz 1956 (Law on Salaries 1956, BGBl. 54/1956), as amended by the Bundesbesoldungsreform 2010 (Federal Law on remuneration reform 2010, BGBl. I, 82/2010) ('the 2010 GehG'), provided, in subparagraph 1 thereof:

'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 in respect of each job category shall be five years and two years for other incremental steps.'

10 Paragraph 12 of the 2010 GehG provided:

'1. Subject to the restrictions set out in subparagraphs 4 to 8, the reference date to be taken into account for the purposes of advancement by an incremental step shall be calculated by counting backwards from the date of recruitment in respect of 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 fulfil the criteria set out in subparagraphs 3 or 3a shall be taken into account in their entirety;

(b) which do not fulfil the criteria set out 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 one half for three additional years.

1a. The length of the periods in respect of which backdating was carried out in accordance with point 2(b)(aa) of subparagraph 1 and point 6 of subparagraph 2 and of the periods of apprenticeship in respect of which backdating was carried out in accordance with point 4(d) of subparagraph 2 may not exceed three years in total. However, where

(1) training completed in accordance with point 6 of subparagraph 2 required more than 12 school levels under the provisions of the education legislation, that period shall be extended by 1 year in respect of each school level completed beyond the 12th level;

(2) an apprenticeship completed in accordance with point 4(d) of subparagraph 2 required more than 36 months of apprenticeship under the provisions referred to, that period shall be extended by 1 month in respect of each month of apprenticeship completed beyond 36 months.

…'

11 The reference date for determining the advancement of a civil servant and, therefore, his or her position in the remuneration scale could be fixed, in accordance with Paragraph 113(10) and (11) of the 2010 GehG, only upon application, with the previous provisions remaining applicable in the version in force on 31 December 2003.

The 2015 GehG

12 In order to remedy the discrimination on grounds of age resulting from the 2010 GehG, as found in the judgment of the Court of 11 November 2014, *Schmitzer* (C-530/13, EU:C:2014:2359), the 2010 GehG was amended with retroactive effect by the Bundesbesoldungsreform 2015 (Federal Law on remuneration reform 2015, BGBl. I, 32/2015), by the Dienstrechts-Novelle 2015 (Law amending the rules relating to the civil service 2015, BGBl. I, 65/2015) and by the Besoldungsrechtsanpassungsgesetz (Law adjusting remuneration legislation 2016, BGBl. I, 104/2016) ('the 2015 GehG').

13 Paragraph 8 of the 2015 GehG, entitled 'Grading and advancement', provided, in subparagraph 1 thereof:

'… Grading and further advancement shall be determined on the basis of remuneration seniority.'

14 Under Paragraph 12(1) of the 2015 GehG, entitled 'Remuneration seniority':

'Remuneration seniority comprises the length of the periods of service effective for advancement that are spent in the employment relationship, plus the length of the accreditable previous service periods.'

15 Paragraph 169c of the 2015 GehG, which relates to the regrading of currently employed civil servants in the new remuneration and advancement system, provided:

'1. All civil servants in the job categories and salary groups specified in Paragraph 169d who were employed on 11 February 2015 shall be regraded in the new remuneration system established by this Federal law, in accordance with the following provisions and solely on the basis of their previous salaries. Civil servants shall initially be ranked, based on their previous salary, at an incremental step in the new remuneration system in which that previous salary is maintained. …

2. The transition of the civil servant to the new remuneration system shall occur through an overall determination of his or her remuneration seniority. The overall determination shall be based on the transition amount. The transition amount shall be the full salary excluding any extraordinary advancements, which was used as a basis for calculating the civil servant's monthly remuneration for February 2015 (transition month). …

2a. The base salary for that incremental step which was actually decisive for the salaries paid in respect of the transition month shall be used as the transition amount (grading according to the payslip). There shall be no assessment of whether the reason for and amount of the salary payments

were correct. A subsequent correction of the salary payments shall be taken into account when calculating the transition amount only in so far as

(1) factual errors which occurred during inputting in an automated data processing system are corrected, and

(2) the erroneous inputting clearly departs from the intended inputting as shown by the documents already existing at the time of the inputting.

…

3. The remuneration seniority of regraded civil servants shall be fixed on the basis of the period of time required for advancement from the first incremental step (from the first day) to the incremental step within the same job category for which the next lower salary in relation to the transition amount is cited in the version in force on 12 February 2015. If the transition amount is the same as the lowest amount cited for an incremental step within the same job category, this incremental step shall be used. All amounts for comparison shall be rounded to the nearest whole euro.

4. The remuneration seniority fixed in accordance with subparagraph 3 shall be extended by the period of time that elapsed between the date of the last advancement to a higher salary and the end of the transition month, provided that that period is relevant for the purpose of advancement.

…'

16 Under point 3 of Paragraph 175(79) of the 2015 GehG, Paragraphs 8 and 12 of that law, including their headings, entered into force, in the version of the 2015 GehG, the day following the date of publication, namely 12 February 2015, and all previous versions of those paragraphs could no longer be applied in ongoing or future procedures.

The 2020 GehG

17 In order to remedy the discrimination on grounds of age resulting from the 2015 GehG, as found in the judgments of the Court of 8 May 2019, *Leitner* (C-396/17, 'the judgment in *Leitner*', EU:C:2019:375), and of 8 May 2019, *Österreichischer Gewerkschaftsbund* (C-24/17, EU:C:2019:373), the 2015 GehG was amended by the 2. Dienstrechts-Novelle 2019 (Second Law amending the rules relating to the civil service 2019, BGBl. I, 58/2019) and the Dienstrechts-Novelle 2020 (Law amending the rules relating to the civil service 2020, BGBl. I, 153/2020) ('the 2020 GehG').

18 Under Paragraph 169f of the 2020 GehG:

'1. For civil servants

(1) who are in employment on the day of publication of the [Second Law amending the rules relating to the civil service 2019] and

(2) who have been transferred under Paragraph 169c(1) (if necessary, in conjunction with Paragraph 169d(3), (4) or (6)) and

(3) in respect of whom the initial determination of the advancement reference date regarding current employment was made by excluding periods prior to the age of 18 and

(4) in respect of whom, following the initial determination referred to in point 3, periods prior to the age of 18 were not accredited in accordance with the provisions of the [Federal Law on remuneration reform 2010] and had no effect whatsoever on grading due to the fact that the extension, carried out under that federal law, of the period required for the first advancement was not taken into account,

the position [in the remuneration scale] shall be redetermined *ex officio* by decision.

…

3. Where procedures pending on the date of publication of the [Second Law amending the rules relating to the civil service 2019] primarily concern the accreditation of additional previous periods of service, the redetermination of the advancement reference date, in particular under Paragraph 113(10), in the version of the [Federal Law on remuneration reform 2010], the redetermination of remuneration seniority or the determination of the position [in the remuneration scale] of a civil servant under point 3 of subparagraph 1, the redetermination shall take place in the context of those procedures. In procedures pending on the date of publication of the [Second Law amending the rules relating to the civil service 2019], in which such an issue is to be assessed as a preliminary matter, the assessment shall be made without prejudice to Paragraph 38 of the Allgemeines Verwaltungsverfahrensgesetz 1991 (General Law on administrative procedure, BGBl. 51/1991), in accordance with subparagraph 6 thereof.

4. The redetermination referred to in subparagraphs 1 to 3 shall be made, after defining the comparison reference date (Paragraph 169g), by fixing the remuneration seniority as at 28 February 2015. The remuneration seniority referred to in Paragraph 169c shall be increased by the period from the comparison reference date to the advancement reference date where the comparison reference date is prior to the advancement reference date; otherwise, it shall be reduced by that period. The comparison shall be made using the last advancement reference date which was determined excluding periods prior to the age of 18.

…

6. Remuneration shall be determined retroactively by taking into account the period of service which has an effect on advancement

(1) in the case under subparagraph 4 (in respect of periods prior to 1 March 2015 by application of Paragraph 169c(6b), in the version in force, and of Paragraph 8 in the version of the [Law amending the rules relating to the civil service 2015]), by reference to the redetermined remuneration seniority …

…’

19 Paragraph 169g of the 2020 GehG provides:

‘1. The comparison reference date shall be calculated in such a way that previous periods completed after reaching the minimum age required for working under a combined work/training scheme referred to in Article 4(2)(b) of Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work (OJ 1994 L 216, p. 12), which were to be accredited as

preceding the date of recruitment when calculating the advancement reference date or which should have been accredited as such by disregarding the age limit of 18 years, are accredited by counting backwards before the date of recruitment in accordance with subparagraphs 2 to 6.

2. The following provisions relating to the advancement reference date shall be applied when calculating the comparison reference date in accordance with subparagraphs 3 to 6:

(1) Paragraph 12 in the version of the [2. Dienstrechts-Novelle 2007 (Second Law amending the rules relating to the civil service 2007, BGBl. I, 96/2007)],

(2) Paragraph 12a in the version of the [Dienstrechts-Novelle 2011 (Law amending the rules relating to the civil service 2011, BGBl. I, 140/2011)],

(3) Paragraph 113 in the version of the [Dienstrechts-Novelle 2004 (Law amending the rules relating to the civil service 2004, BGBl. I, 176/2004)],

(4) Paragraph 113a in the version of the [Dienstrechts-Novelle 2007 (Law amending the rules relating to the civil service 2007, BGBl. I, 53/2007)], and

(5) Annex 1 in the version of the [Law amending the rules relating to the civil service 2004].

The determining provisions shall be those relating to the job category to which the civil servant belonged at the time when the advancement reference date referred to in the last sentence of Paragraph 169f(4) was determined.

3. By way of derogation from the provisions referred to in points 1 to 5 of subparagraph 2

(1) previous periods completed before reaching the minimum age required for working under a combined work/training scheme referred to in Article 4(2)(b) of [Directive 94/33] shall replace periods completed before reaching the age of 18;

(2) for civil servants belonging to job categories in respect of which the provisions relating to the advancement reference date provide that successful periods of study undertaken in a higher education institution are to be accredited as preceding the date of recruitment, the only periods which shall be accredited as preceding the date of recruitment as successful periods of study undertaken in a higher education institution are those which were completed

(a) between the day after 31 August of the calendar year in which the civil servant was admitted to the 12th school level, and

(b) the day after 30 June of the following calendar year.

Where the provisions of the education legislation that are applicable to the civil servant provide for a period of study of more than 12 years in principle, the period to be accredited as preceding the date of recruitment shall be extended by 1 year per additional school level;

(3) with the agreement of the Federal Minister for Art, Culture, Public Service and Sport, periods of equivalent professional activity referred to in point 1a of Paragraph 12(2) shall be taken into account in full, where they

(a) were completed before reaching the age of 18, or

(b) were completed after reaching the age of 18 where the accreditation of other periods as preceding the date of recruitment was capped by law in the public interest for the purposes of Paragraph 12(3), in the version in force at that time.

In the calculation of any loss during transition, those periods shall be treated as periods completed in connection with an appointment by an Austrian local authority;

(4) other periods which must be taken into account to the extent of one half up to a maximum of three years shall be taken into account to the extent of one half up to a maximum of seven years;

(5) periods completed under a training contract as an apprentice in a local authority shall be accredited as preceding the date of recruitment only if the civil servant entered into an employment relationship after 31 March 2000;

(6) periods of service (in training) as a scientific (artistic) employee referred to in Paragraph 6 of the [Bundesgesetz über die Abgeltung von wissenschaftlichen und künstlerischen Tätigkeiten an Universitäten und Universitäten der Künste (Federal Law on emoluments for scientific and artistic activities in universities and universities of the arts, BGBl. 463/1974)] shall be accredited as preceding the date of recruitment only if the civil servant entered into an employment relationship after 30 September 2001.

4. Other periods which must be taken into account only to the extent of one half shall be accredited as preceding the date of recruitment in the calculation of the comparison reference date only in so far as they exceed four years, of which half must be taken into account.

5. Where a maximum limit or a loss, as in the case of transition, has been laid down by law for the accreditation of periods as preceding the date of recruitment which were completed after the age of 18, these provisions shall be applied in the same way to all periods which must be taken into account.

6. In so far as subparagraphs 3 to 5 do not lay down any derogating rules, with respect to the accreditation of periods as preceding the date of recruitment, consideration shall be given to *res judicata* as regards periods completed after the age of 18 where those periods have already been accredited in full as preceding the date of recruitment or were not accredited as such when the advancement reference date was determined (last sentence of Paragraph 169f(4)) under the provisions of points 1 to 5 of subparagraph 2 or of previous versions of those provisions.'

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

20 FW and CE are civil servants of the Austrian Federal State.

21 FW, born in 1970, was an apprentice from 1 September 1985 to 1 August 1988 in a public undertaking. On 1 July 1991, he joined the Austrian Federal civil service. The date of 17 September 1989 was taken as the reference date for his advancement and for his position in the remuneration scale.

22 CE, born in 1972, was an apprentice from 1 September 1987 to 31 August 1990 at an Austrian local authority. He joined the Austrian Federal civil service on 1 November 1995. The date of 23 September 1990 was taken as the reference date for his advancement and his position in the remuneration scale.

23 In 2010, following the enactment of the Federal Law on remuneration reform 2010, FW and CE each applied for the determination of a new reference date for their advancement so that accreditable periods completed prior to their 18th birthday would also be taken into account and their position in the remuneration scale adjusted accordingly.

24 Ruling on those applications, the tax authorities subsequently determined new reference dates for FW and CE, namely 1 September 1986 and 1 July 1987 respectively. However, those authorities, on the basis of the national law in force, rejected any change in FW and CE's position in the remuneration scale.

25 In 2013, FW again applied for the determination of the reference date for his advancement by an incremental step and of the resulting position in the remuneration scale, and for the payment in arrears of remuneration taking into account the accreditable periods which he completed before the age of 18.

26 For his part, CE sought, in 2015, the payment in arrears of remuneration owed on account of the new reference date for his advancement, as determined following his application to that effect in 2010, and the correction of the transition amount, as provided for in Paragraph 169c(2) of the 2015 GehG.

27 Since the tax authorities rejected FW's application and failed to take a decision on CE's application in due time, those individuals each brought an action before the Bundesverwaltungsgericht (Federal Administrative Court, Austria). By judgments of 28 September 2020, as regards FW, and of 27 October 2020, as regards CE, that court brought forward FW's advancement reference date by one day, namely 16 September 1989, and brought forward that of CE by four days, namely 19 September 1990, while dismissing the part of the actions seeking payment in arrears of remuneration.

28 FW and CE subsequently brought appeals on a point of law (*Revision*) against those judgments before the referring court, namely the Verwaltungsgerichtshof (Supreme Administrative Court, Austria).

29 As a preliminary point, the referring court states that the Austrian system for remuneration of the civil service was initially based on the principle that periods of service completed by a civil servant before the age of 18 should not be taken into account in determining the advancement reference date.

30 In that regard, the referring court recalls that it was only subsequent to the judgment of 18 June 2009, *Hütter* (C-88/08, EU:C:2009:381), in which the Court held that the rules for determining the remuneration of Austrian civil servants were contrary to EU law since they did not provide for periods of service completed before the age of 18 to be taken into account, that the national legislature adopted the Federal Law on remuneration reform 2010.

31 Following the entry into force of that law, periods completed before the age of 18 could, in accordance with the provisions of the 2010 GehG, be taken into account in determining the advancement reference date, but only upon application by the civil servant concerned and with the result that the period required for advancement from the first to the second incremental step was extended by three years. However, in its judgment of 11 November 2014, *Schmitzer* (C-530/13, EU:C:2014:2359), the Court held, in essence, that Directive 2000/78 precludes national legislation which, in order to put an end to discrimination on grounds of age, thus 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.

32 The referring court states that the national legislature subsequently adopted the Federal Law on remuneration reform 2015 and the Law adjusting remuneration legislation 2016 in order to replace, in respect of civil servants currently employed on 11 February 2015, the remuneration system which was based on the advancement reference date with a new system based on remuneration seniority, by introducing a mechanism for regrading carried out on the basis of a 'transition amount'. This was calculated in accordance with the rules of the 2010 GehG and therefore ultimately based, in respect of officials recruited before the entry into force of the 2010 GehG, namely before 31 August 2010, on the provisions of the previous version of the Law on Salaries which, in order to take into account professional experience prior to recruitment, drew a distinction according to whether that experience had taken place before or after the 18th birthday of the persons concerned; the discriminatory nature of those provisions having been established in the judgment of 18 June 2009, *Hütter* (C-88/08, EU:C:2009:381).

33 In that regard, by its judgment in *Leitner*, the Court held that EU law also precluded the remuneration and advancement system resulting from the 2015 GehG, taking the view, in essence, that that legislation was not capable of establishing a non-discriminatory system for civil servants disadvantaged by the remuneration and advancement system resulting from the 2010 GehG, since it definitively maintained, with regard to those civil servants, the discrimination based on age introduced by that system.

34 The referring court states that the Austrian legislature adopted the Second Law amending the rules relating to the civil service 2019 in order to bring the national legislation into compliance with Directive 2000/78 and with the abovementioned case-law of the Court, inter alia the judgment in *Leitner*. That law concerns civil servants who have been transferred to the new remuneration system on the basis of their seniority in the remuneration scale then applicable, without any subsequent accreditation of the periods relating to them which were completed before the age of 18. The Austrian legislature thus established the bases for a regrading applied *ex officio*, under which provision is made, in accordance with Paragraphs 169f and 169g of the 2020 GehG, for an *ex officio* reassessment of accreditable periods before the civil servant's 18th birthday by determining a comparison reference date.

35 The referring court is uncertain as to whether the Second Law amending the rules relating to the civil service 2019 has now put an end to the discrimination previously established by the Court.

36 First, the referring court observes that the remuneration system provided for by the 2020 GehG continues to be based on a mechanism for the transfer of civil servants on the basis of the remuneration seniority applicable as at 28 February 2015, the determination of which was held by the Court to be discriminatory in its judgment in *Leitner*. In the referring court's view, it is true that the salary for February 2015, namely the salary corresponding to the transition month, is corrected by the difference between the advancement reference date and the comparison reference date provided for in Paragraph 169g of the 2020 GehG. It notes, however, that the increase from three years to seven years in the maximum limit of 'other periods' which must be taken into account to the extent of one half, as provided for in point 4 of Paragraph 169g(3), is offset by the flat-rate deduction introduced in Paragraph 169g(4), under which those periods are to be accredited in the calculation of the comparison reference date only in so far as they exceed four years.

37 Secondly, the referring court observes that, under points 3 and 4 of Paragraph 169f(1) of the 2020 GehG, civil servants in respect of whom, following the submission of an application to that

effect prior to the entry into force of the Second Law amending the rules relating to the civil service 2019, the reference date was recalculated taking into account the accreditable periods completed before the age of 18 and whose position in the remuneration scale was revised accordingly, are not eligible for the redetermination of that position provided for in Paragraph 169g of the 2020 GehG. By contrast, where civil servants have, as in the present case, submitted such applications and have also obtained the determination of a new reference date, but that has not yet had any effect on their position in the remuneration scale, those civil servants would henceforth be subject to Paragraph 169g of the 2020 GehG and would then run the risk of not benefiting, as in the present case, from any actual improvement in the reference date applicable to them and, therefore, in their position in the remuneration scale. According to the referring court, it is apparent from the case-law of the Court, in particular the judgment of 16 July 2020, *État belge (Family reunification – Minor child)* (C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 42 and the case-law cited), that it is not consistent with the principles of equal treatment and of legal certainty for the success of an application to depend on the speed with which it is processed or with which a decision is taken on an action, and therefore on circumstances not attributable to the applicant.

38 Thirdly, the referring court notes that, in the determination of the comparison reference date, point 5 of Paragraph 169g(3) of the 2020 GehG provides for periods of apprenticeship to be accredited in full only where the civil servant concerned was recruited by a national local authority after 31 March 2000. By contrast, periods of apprenticeship completed by civil servants who were recruited before that date could be accredited as 'other periods' only to the extent of one half. In the referring court's view, it follows that, in so far as that system disadvantages officials recruited prior to that date, who are generally older, it could constitute indirect discrimination on grounds of age.

39 In those circumstances, the Verwaltungsgerichtshof (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is EU law, in particular Articles 1, 2 and 6 of Directive [2000/78], [read] in conjunction with Article 21 of the [Charter], to be interpreted as precluding national legislation under which a remuneration system which discriminates on grounds of age is replaced by a remuneration system under which the [grading] of a civil servant continues to be determined on the basis of the remuneration seniority determined with effect from a particular transition month (February 2015) in a discriminatory manner under the old remuneration system and, in that context, is subject to a correction in respect of the initially determined previous periods of service through the determination of a comparison reference date, but under which, with regard to the periods completed after the civil servant's 18th birthday, only the other periods, of which half must be taken into account, are subject to review, and under which the four-year extension of the period in which previous periods of service must be taken into account is juxtaposed with the fact that the other periods, of which half must be taken into account, must be accredited as periods preceding the date of [recruitment] in the determination of the comparison reference date only in so far as they exceed the total amount of four years, of which half must be taken into account (flat-rate deduction of four years, of which half must be taken into account)?

(2) Is Question 1 to be answered differently in respect of procedures in which, although a new advancement reference date was already definitively determined before the entry into force of the 2. Dienstrechts-Novelle 2019 (Second Law amending the rules relating to the civil service 2019), that date still had no effect on the civil servant's [position in the remuneration scale] because the authority had not yet taken a decision in direct application of EU law, and in which the comparison reference date must now once again be redetermined by reference to the advancement reference date determined in an age-discriminatory manner without taking into account the advancement

reference date determined in the meantime, and the other periods, of which half must be taken into account, are subject to the flat-rate deduction?

(3) Is EU law, in particular Articles 1, 2 and 6 of Directive [2000/78], [read] in conjunction with Article 21 of the [Charter], to be interpreted as precluding national legislation under which, despite the redetermination of [the seniority and position in the remuneration scale], periods [completed as part of training with an Austrian local authority] must be accredited as periods preceding the date of [recruitment] in the determination of the comparison reference date only if the civil servant entered the employment relationship after 31 March 2000 and, otherwise, those periods are accredited only as other periods, of which half must be taken into account, and are thus subject to the flat-rate deduction, with the result that that legislation tends to disadvantage longer-serving civil servants?'

Procedure before the Court

40 By letter of 21 September 2022, the Austrian Government informed the Court of a legislative amendment made since the order for reference, namely the repeal, with retroactive effect, of point 4 of Paragraph 169f(1) of the 2020 GehG by the Dienstrechts-Novelle 2022 (Law amending the rules relating to the civil service 2022, BGBl. I, 137/2022).

41 Subsequently, the Court sent a request for clarification to the referring court asking it to state, first, whether it could confirm that legislative amendment, second, whether it wished to maintain its reference for a preliminary ruling in those circumstances and, third, if so, what conclusions should be drawn from that legislative amendment with respect to the present reference for a preliminary ruling.

42 By letter of 19 October 2022, the referring court, first of all, confirmed the repeal, with retroactive effect, of point 4 of Paragraph 169f(1) of the 2020 GehG. It then stated that the first and third questions are not affected by that legislative amendment. Finally, as regards the second question, it stated that the legislative amendment at issue has no bearing on its relevance, since that question relates, first and foremost, to the interpretation of Paragraph 169f(3) of the 2020 GehG. According to the referring court, in accordance with national procedural rules, the interpretation provided by that court is made, in any event, in the light of the factual and legal situation existing as at the date of the administrative decision being challenged in the dispute in the main proceedings, for which reason the legislative amendments adopted subsequently are not relevant, even though they have retroactive effect. Therefore, the referring court decided to maintain the present request for a preliminary ruling in its entirety.

Consideration of the questions referred

The first question

43 By its first question, the referring court asks, in essence, whether Articles 1, 2 and 6 of Directive 2000/78, read in conjunction with Article 21 of the Charter, must be interpreted as precluding national legislation under which the grading of a civil servant is fixed on the basis of his or her seniority in the remuneration scale of a previous remuneration system found to be discriminatory in so far as that system, for the purposes of determining that seniority, allowed only accreditable periods prior to the recruitment of the civil servant which were completed from the age of 18 to be taken into account, to the exclusion of those completed before that age, where that legislation provides that a correction of the civil servant's accreditable periods completed prior to his or her recruitment, as initially calculated, is to be made by determining a comparison reference date, for the purposes of which, in order to determine that seniority, accreditable periods prior to

recruitment which were completed before that civil servant's 18th birthday are henceforth taken into account where, first, as regards periods completed after the 18th birthday, only 'other periods' of which half must be taken into account are taken into account and, second, those 'other periods' are increased from three to seven years, but are taken into account only in so far as they exceed four years.

44 As a preliminary point, it should be noted that, in the present case, the question thus arises as to whether a difference of treatment on grounds of age established by the Court may be regarded as having been eliminated where the national legislation seeking definitively to eliminate that difference of treatment provides that, in recalculating the remuneration seniority of a civil servant, accreditable periods prior to recruitment must also be taken into account where they are completed before the age of 18, in particular as 'other periods' of which half must be taken into account over a period of seven years instead of the period of three years laid down by the previous national legislation, but where those periods allow remuneration seniority to be determined only if they exceed four years.

45 In that regard, it should be borne in mind that the prohibition of discrimination based on, inter alia, age is incorporated in Article 21 of the Charter and that that prohibition was given specific expression by Directive 2000/78 in the field of employment and occupation (judgment of 17 November 2022, *Ministero dell'Interno (Age limit for the recruitment of police officers)*, C-304/21, EU:C:2022:897, paragraph 36 and the case-law cited).

46 Thus, it is necessary, first of all, to examine whether the national legislation at issue in the case in the main proceedings establishes a difference of treatment for the purposes of Article 2(1) of Directive 2000/78.

47 In that regard, it should be borne in mind that, under that provision, the 'principle of equal treatment' means that there is to 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 Directive 2000/78 states that, for the purposes of Article 2(1) thereof, direct discrimination is to be taken to occur where one person is treated less favourably than another is treated in a comparable situation, on any of the grounds referred to in Article 1 of that directive.

48 In the case in the main proceedings, the categories of persons relevant for the purposes of that comparison are, first, civil servants who completed accreditable periods, if only in part, before reaching the age of 18 and, second, civil servants who completed such periods of the same nature and of a comparable duration after reaching that age.

49 It is apparent from the documents before the Court that the Austrian legislature, by adopting the Second Law amending the rules relating to the civil service 2019, introduced a new system for fixing the remuneration seniority of civil servants in order to bring national legislation into compliance with the case-law of the Court resulting from the judgment in *Leitner*.

50 More specifically, by adopting Paragraph 169f(1) of the 2020 GehG, the Austrian legislature sought to determine *ex officio*, in the remuneration scale, the position of currently employed civil servants who had been subject to a regrading mechanism carried out on the basis of a 'transition amount' in accordance with Paragraph 169c(2) of the 2015 GehG, whereas that transition amount had been determined on the basis of provisions which drew a distinction, as regards account being taken of accreditable periods prior to recruitment, according to whether the periods in question were before or after the 18th birthday of the persons concerned.

51 In its judgment in *Leitner*, the Court held that the transfer of currently employed civil servants to a new remuneration and advancement system, carried out in accordance with Paragraph 169c(2) of the 2015 GehG, under which the initial grading of those civil servants had been determined on the basis of the last salary they received under the previous system, maintained the direct discrimination on grounds of age, for the purposes of Directive 2000/78, introduced by that previous system.

52 It is therefore necessary to assess whether the amendments made by the Second Law amending the rules relating to the civil service 2019 actually and definitively eliminated that direct discrimination on grounds of age, which was inherent in the previous remuneration system.

53 As regards the redetermination of remuneration seniority, as introduced by the abovementioned law, it must be pointed out that that law involves a two-step process. First, the remuneration seniority applicable to salary payments as at 28 February 2015 is used, in accordance with Paragraph 169f(4) of the 2020 GehG. That seniority is calculated on the basis of the transition amount within the meaning of Paragraph 169c(2) of the 2015 GehG, that is to say, the gross remuneration which was used as a basis for calculating a civil servant's monthly remuneration for February 2015 (transition month).

54 Secondly, remuneration seniority may, under the second sentence of Paragraph 169f(4) of the 2020 GehG, be corrected by taking into account the difference between the advancement reference date and a comparison reference date, calculated in accordance with the detailed rules referred to in Paragraph 169g of the 2020 GehG, in order, where appropriate, to increase that seniority by the duration of the disadvantage previously suffered in taking into account the periods of professional activity completed prior to the recruitment of the civil servant.

55 First, it follows from the judgment in *Leitner* (paragraph 37) that the remuneration scale resulting from the 2015 GehG is liable to maintain the effects produced by the previous remuneration and advancement system, on account of the link which that scale establishes between the last salary received under that system and the grading in the new remuneration and advancement system.

56 Since the transition is carried out without drawing a distinction between civil servants who were disadvantaged by the previous remuneration and advancement system and those who were not, it should be noted that the Austrian remuneration system applicable to the dispute in the main proceedings appears to continue to be based, at least initially, on the advancement reference date calculated, according to the judgment in *Leitner*, in a discriminatory manner, and on the resulting transition amount.

57 Second, under Paragraph 169g(1) of the 2020 GehG, the comparison reference date is to be calculated by accrediting, on the day of recruitment, previous eligible periods completed after reaching the age of 14 as preceding the date of recruitment, 14 being the minimum age required under EU law for entering into an employment relationship, thus allowing, inter alia, account to be taken, including where they are completed before the civil servant's 18th birthday, of the periods referred to in point 1 of Paragraph 169g(2) of the 2020 GehG, namely, in essence, certain periods of work and training which must be taken into account in their entirety and the 'other periods' referred to in paragraph 44 above.

58 In that regard, according to the explanations provided by the Austrian Government, that recalculation, of the 48 047 cases closed so far, led to an improvement in remuneration seniority of between one month and one year in 19 463 cases, and to an improvement in that seniority of more

than one year in 2 821 cases, the latter relating most often to officials who entered into an employment relationship or, like Mr Hütter in the dispute in the main proceedings at issue in Case C-88/08, underwent an eligible period of training before their 18th birthday, in respect of which those periods must at present be accredited as eligible periods in their entirety in order to determine the position of those officials in the remuneration scale.

59 It thus appears, subject to the verifications to be carried out by the referring court, that the comparison reference date did indeed allow accreditable periods completed before the civil servant's 18th birthday to be taken into account in order to correct the seniority previously fixed on the basis of Paragraph 169c of the 2015 GehG, without those periods being taken into account.

60 However, the referring court observes that, in accordance with Paragraph 169g(6) of the 2020 GehG, not all accreditable periods prior to the recruitment of the civil servant concerned are to be taken into account, since periods completed after the 18th birthday which have already been assessed for the purposes of determining the advancement reference date cannot be reassessed.

61 Nonetheless, by virtue of the 'flat-rate deduction' provided for in Paragraph 169g(4) of the 2020 GehG, 'other periods', of which half are taken into account, are to be accredited as preceding the date of recruitment in the calculation of the comparison reference date only if they exceed four years.

62 In that regard, the referring court observes that, although the maximum limit for 'other periods' of which half must be taken into account under point 2(b) of Paragraph 12(1) of the Law on Salaries 1956, as amended by the Second Law amending the rules relating to the civil service 2007, was increased from three to seven years by point 4 of Paragraph 169g(3) of the 2020 GehG, Paragraph 169g(4) thereof has the effect of offsetting that increase in the maximum limit for 'other periods' to seven years through the flat-rate deduction of four years provided for by that latter provision.

63 However, it should be noted, first, that Paragraph 169g(4) of the 2020 GehG appears to apply to all currently employed civil servants, without drawing a distinction according to whether or not those civil servants were disadvantaged by the remuneration and advancement system resulting from the 2015 GehG on the basis of their respective ages, which is also a matter for the referring court to determine. Second, the flat-rate deduction of four years laid down by that provision appears to apply irrespective of the age of the civil servant at which the 'other periods' of professional activity referred to were completed, that is to say, before or after the 18th birthday of the person concerned.

64 Yet, it must be pointed out that, in so far as the taking into account of half of the accreditable periods completed between the ages of 14 and 18 is offset by the application of the flat-rate deduction of four years provided for in Paragraph 169g(4) of the 2020 GehG, civil servants who have only such periods completed before the age of 18 appear to be deprived of the right to obtain an improvement in their position in the remuneration scale.

65 It follows that, in the present case, as a result of the flat-rate deduction of four years provided for in Paragraph 169g(4) of the 2020 GehG, the applicants' periods of apprenticeship at issue in the main proceedings did not have a significant effect on the calculation of the comparison reference date, despite the four-year increase in the maximum limit for 'other periods' in respect of the period under consideration and, therefore, it also did not have a significant effect on the determination of their position in the remuneration scale.

66 Therefore, subject to an assessment to be made by the referring court, the Second Law amending the rules relating to the civil service 2019 does not appear to have eliminated the discrimination on grounds of age established by the judgment in *Leitner* in so far as, inter alia, the determination of remuneration seniority continues to be made in the light of a difference of treatment between civil servants whose professional experience was, if only in part, acquired before the age of 18 and civil servants who obtained experience of the same nature and of a comparable duration after reaching that age.

67 It is necessary, secondly, to examine whether that difference of treatment could be justified under Article 6(1) of Directive 2000/78.

68 Under that provision, notwithstanding Article 2(2) of that directive, Member States may provide that differences of treatment on grounds of age are not to 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.

69 In the present case, it is apparent from the documents before the Court that the legislative amendments to the remuneration and advancement system at issue in the main proceedings appear to be guided by budgetary as well as administrative considerations, which is a matter for the referring court to determine.

70 Although it is true that, according to the Court's case-law, budgetary considerations can underpin the chosen social policy of a Member State and influence the nature or extent of the measures that the 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 of 21 July 2011, *Fuchs and Köhler*, C-159/10 and C-160/10, EU:C:2011:508, paragraph 74). That also applies to the considerations of an administrative nature referred to by the Austrian Government (judgment in *Leitner*, paragraph 43 and the case-law cited).

71 Therefore, even though the legislation at issue in the main proceedings is capable of protecting the acquired rights and legitimate expectations of civil servants treated more favourably by the remuneration system provided for by the 2015 GehG, it does not appear to be capable of establishing a non-discriminatory system for civil servants disadvantaged by that remuneration and advancement system, since it appears to maintain the discrimination based on age introduced by the previous system with regard to the latter category of civil servants (see, by analogy, judgment in *Leitner*, paragraph 49).

72 It follows from all the foregoing considerations that the answer to the first question is that Articles 1, 2 and 6 of Directive 2000/78, read in conjunction with Article 21 of the Charter, must be interpreted as precluding national legislation under which the grading of a civil servant is fixed on the basis of his or her seniority in the remuneration scale of a previous remuneration system found to be discriminatory in so far as that system, for the purposes of determining that seniority, allowed only accreditable periods prior to the recruitment of the civil servant which were completed from the age of 18 to be taken into account, to the exclusion of those completed before that age, where that legislation provides that a correction of the civil servant's accreditable periods completed prior to his or her recruitment, as initially calculated, is to be made by determining a comparison reference date, for the purposes of which, in order to determine that seniority, accreditable periods prior to recruitment which were completed before that civil servant's 18th birthday are henceforth taken into account where, first, as regards periods completed after the 18th birthday, only 'other periods' of which half must be taken into account are taken into account and, second, those 'other

periods' are increased from three to seven years, but are taken into account only in so far as they exceed four years.

The second question

73 By its second question, the referring court asks, in essence, whether EU law must be interpreted as precluding national legislation which provides, as regards civil servants in respect of whom a procedure intended to redefine their position in the remuneration scale was pending on the date of publication of a legislative amendment to the remuneration system including that scale, that remuneration is to be recalculated in accordance with the new provisions relating to the comparison reference date, those provisions containing new limitations regarding the maximum length of accreditable periods, whereas no such calculation is made for civil servants in respect of whom a procedure with the same purpose, initiated previously, has already been closed by a final decision, based on a reference date determined more favourably under the previous remuneration system whose provisions, considered by national courts as being discriminatory, have been disapplied in direct application of the principle of equal treatment laid down by EU law.

74 In order to answer that question, it is necessary to examine whether the national legislation at issue in the main proceedings, in so far as it makes the recalculation of remuneration, carried out on the basis of the provisions relating to the comparison reference date, dependent on the fact that a procedure intended to redefine the civil servant's position in the remuneration scale was pending or closed at the time when that legislation was published, introduces a difference of treatment contrary to EU law.

75 In that regard, first, it is apparent from Paragraph 169f(3) of the 2020 GehG that, where procedures seeking the accreditation of periods of service prior to the recruitment of civil servants were pending on the date of publication of the Second Law amending the rules relating to the civil service 2019, the redetermination of the advancement reference date, the redetermination of remuneration seniority or the determination of the position of those civil servants in the remuneration scale is to take place in the context of those procedures.

76 Second, it follows from an *a contrario* reading of point 4 of Paragraph 169f(1) of the 2020 GehG that civil servants in respect of whom a new advancement reference date had, on the date of publication of the Second Law amending the rules relating to the civil service 2019, already been definitively determined by taking into account periods of service prior to the recruitment of those civil servants which were completed before the age of 18, following an application to that effect, with the result that the application of that new date led to an improvement in the position of the civil servants concerned in the remuneration scale, are excluded from such regrading.

77 Therefore, as regards the categories of comparable persons, Paragraph 169f(3) of the 2020 GehG appears to have the effect, subject to an assessment to be made by the referring court, that civil servants who were able to bring to a conclusion procedures in which they alleged discrimination on grounds of age benefit from accreditation in full of periods of service prior to their recruitment which were completed before the age of 18. By contrast, where such procedures had not yet been concluded on the date of publication of the Second Law amending the rules relating to the civil service 2019, namely 8 July 2019, the civil servants concerned are treated in the same way as all other civil servants in respect of whom the correction of the comparison reference date must be made *ex officio*.

78 Thus, it appears that, subject to verification to be carried out by the referring court, in respect of the first category of civil servants, the treatment which the Court held to be discriminatory in the

judgment in *Leitner* was brought to an end, in so far as those civil servants were able to benefit from the solution set out in paragraph 75 of that judgment, consisting, inter alia, in the finding that, for as long as measures reinstating equal treatment have not been adopted, civil servants disadvantaged by the previous remuneration and advancement system should be granted the same advantages as those enjoyed by the civil servants treated more favourably by that system, as regards both the recognition of periods of service completed before the age of 18 and advancement in the remuneration scale. By contrast, as is apparent from the Court's answer to the first question, that is not the case as regards the second category of civil servants.

79 The referring court observes that, as regards the applicants in the main proceedings, who fall within that second category, the tax authorities recalculated for each of them an advancement reference date taking into account three additional years as compared with the advancement reference date which had been applied to them following their recruitment. However, it notes that those recalculations did not lead to an improvement in the position of those applicants in the remuneration scale, since the procedures concerning them were still pending on the date of publication of the Second Law amending the rules relating to the civil service 2019. Thus, in its view, the comparison reference date must, once again, be based on the advancement reference date which was applied to them following their recruitment, that is to say, based on a date which was calculated in a discriminatory manner. According to the referring court, it follows that the advancement reference date applicable to those applicants was not improved by three additional years, but only by a few days.

80 In that regard, it should be pointed out that any measure seeking to eliminate discrimination contrary to EU law, including individual measures relating to the grant to persons within the disadvantaged category of the same advantages as those enjoyed by persons within the favoured category, constitutes an implementation of EU law, which must observe its requirements (see, to that effect, judgment of 7 October 2019, *Safeway*, C-171/18, EU:C:2019:839, paragraph 37).

81 Those requirements include the requirements stemming from the general principle of equal treatment enshrined in Article 20 of the Charter and from the principle of legal certainty.

82 It follows from the case-law of the Court that national legislation, such as Paragraph 169f(3) of the 2020 GehG, which has the effect, in circumstances such as those at issue in the main proceedings, of treating differently civil servants who have initiated a procedure in order to obtain a redetermination of the advancement reference date concerning them on the basis of periods of service prior to their recruitment which were completed before the age of 18, according to whether or not the authorities or courts competent to review those periods have already given a definitive ruling, is contrary to the principle of equal treatment, as enshrined in Article 20 of the Charter, and to the principle of legal certainty, which require identical and predictable treatment for all civil servants who are chronologically in the same situation, in so far as the accreditation of those periods depends on circumstances not attributable to the civil servants concerned, such as the length of time taken to process their applications (see, by analogy, judgment of 9 September 2021, *Bundesrepublik Deutschland (Family member)*, C-768/19, EU:C:2021:709, paragraph 41 and the case-law cited).

83 In the light of the foregoing considerations, the answer to the second question is that the principle of equal treatment, as enshrined in Article 20 of the Charter, and the principle of legal certainty must be interpreted as precluding national legislation which provides, as regards civil servants in respect of whom a procedure intended to redefine their position in the remuneration scale was pending on the date of publication of a legislative amendment to the remuneration system including that scale, that remuneration is to be recalculated in accordance with the new provisions relating to the comparison reference date, those provisions containing new limitations regarding the

maximum length of accreditable periods, with the result that discrimination on grounds of age contrary to Articles 1, 2 and 6 of Directive 2000/78, read in conjunction with Article 21 of the Charter, is not eliminated, whereas no such calculation is made for civil servants in respect of whom a procedure with the same purpose, initiated previously, has already been closed by a final decision, based on a reference date determined more favourably under the previous remuneration system whose provisions, considered by national courts as being discriminatory, have been disapplied in direct application of the principle of equal treatment laid down by EU law.

The third question

84 By its third question, the referring court asks, in essence, whether Articles 1, 2 and 6 of Directive 2000/78, read in conjunction with Article 21 of the Charter, must be interpreted as precluding national legislation which provides that periods of apprenticeship undertaken with a national local authority are to be taken into account in their entirety, for the purposes of determining the comparison reference date, only where the civil servant concerned was recruited by the State after a certain date, whereas half of periods of apprenticeship are to be taken into account, in being subject to a flat-rate deduction, where the civil servant concerned was recruited by the State before that date.

85 First of all, it should be recalled that, as is apparent from paragraph 47 above, it follows from Article 2(1) of Directive 2000/78, read in conjunction with Article 1 thereof, that, for the purposes of that directive, the principle of equal treatment requires that there is to be no direct or indirect discrimination whatsoever on the grounds, inter alia, of age. Moreover, it is clear from Article 2(2)(b) of Directive 2000/78 that, for the purposes of that directive, indirect discrimination on grounds of age is to be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular age at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

86 Therefore, in order to determine whether the applicants in the main proceedings may rely on the principle referred to in the preceding paragraph, it is necessary to ascertain whether, in circumstances such as those at issue in the main proceedings, civil servants recruited by the Austrian Federal State up until 31 March 2000 inclusive and those recruited after that date receive, directly or indirectly, different treatment on account of the age they were at the time of their recruitment.

87 In that regard, it should be noted that, in accordance with point 5 of Paragraph 169g(3) of the 2020 GehG, periods of apprenticeship with a national local authority are to be taken into account, for the purposes of determining the comparison reference date, only if the civil servant concerned entered into an employment relationship with the Austrian Federal State after 31 March 2000.

88 In the present case, the periods of apprenticeship of the applicants in the main proceedings, completed with a national local authority, cannot be taken into account in their entirety for the purposes of determining the comparison date, given that they were each recruited by the Austrian Federal State before 31 March 2000.

89 It follows that that difference of treatment results from the date on which the civil servants were recruited by that State, since it is on the basis of that date that the rules relating to the accreditation of periods of apprenticeship are applicable.

90 As the only relevant criterion for the purposes of applying the rules relating to the accreditation of periods of apprenticeship resulting from the 2020 GehG, the date on which the civil servant was recruited by the Austrian Federal State, referred to in point 5 of Paragraph 169g(3) of the 2020 GehG, constitutes a criterion independent of the age of the civil servant on the date of his or her recruitment. Accordingly, that criterion, which renders the application of new rules dependent exclusively on the date of recruitment of the civil servant, as an objective and neutral factor, is manifestly unconnected to any taking into account of the age of the persons recruited (judgment of 14 February 2019, *Horgan and Keegan*, C-154/18, EU:C:2019:113, paragraph 25 and the case-law cited).

91 Therefore, the new conditions for accreditation of periods of apprenticeship undertaken with a national local authority, depending on the date of entry into service with the Austrian Federal State, are based on a criterion which is in no way linked to the age of the civil servants concerned, and, moreover, there is nothing to indicate that those conditions involve any indirect discrimination on grounds of age (see, to that effect, judgment of 20 October 2022, *Curtea de Apel Alba Iulia and Others*, C-301/21, EU:C:2022:811, paragraphs 58 and 59 and the case-law cited).

92 In the light of the foregoing observations, the answer to the third question is that Articles 1, 2 and 6 of Directive 2000/78, read in conjunction with Article 21 of the Charter, must be interpreted as not precluding national legislation which provides that periods of apprenticeship undertaken with a national local authority are to be taken into account in their entirety, for the purposes of determining the comparison reference date, only where the civil servant concerned was recruited by the State after a certain date, whereas half of periods of apprenticeship are to be taken into account, in being subject to a flat-rate deduction, where the civil servant concerned was recruited by the State before that date.

Costs

93 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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:

1. **Articles 1, 2 and 6 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, read in conjunction with Article 21 of the Charter of Fundamental Rights of the European Union,**

must be interpreted as precluding national legislation under which the grading of a civil servant is fixed on the basis of his or her seniority in the remuneration scale of a previous remuneration system found to be discriminatory in so far as that system, for the purposes of determining that seniority, allowed only accreditable periods prior to the recruitment of the civil servant which were completed from the age of 18 to be taken into account, to the exclusion of those completed before that age, where that legislation provides that a correction of the civil servant's accreditable periods completed prior to his or her recruitment, as initially calculated, is to be made by determining a comparison reference date, for the purposes of which, in order to determine that seniority, accreditable periods prior to recruitment which were completed before that civil servant's 18th birthday are henceforth taken into account where, first, as regards periods completed after the 18th birthday, only 'other periods' of which half must be taken into account are taken into account and, second,

those ‘other periods’ are increased from three to seven years, but are taken into account only in so far as they exceed four years.

2. **The principle of equal treatment, as enshrined in Article 20 of the Charter of Fundamental Rights, and the principle of legal certainty**

must be interpreted as precluding national legislation which provides, as regards civil servants in respect of whom a procedure intended to redefine their position in the remuneration scale was pending on the date of publication of a legislative amendment to the remuneration system including that scale, that remuneration is to be recalculated in accordance with the new provisions relating to the comparison reference date, those provisions containing new limitations regarding the maximum length of accreditable periods, with the result that discrimination on grounds of age contrary to Articles 1, 2 and 6 of Directive 2000/78, read in conjunction with Article 21 of the Charter of Fundamental Rights, is not eliminated, whereas no such calculation is made for civil servants in respect of whom a procedure with the same purpose, initiated previously, has already been closed by a final decision, based on a reference date determined more favourably under the previous remuneration system whose provisions, considered by national courts as being discriminatory, have been disapplied in direct application of the principle of equal treatment laid down by EU law.

3. **Articles 1, 2 and 6 of Directive 2000/78, read in conjunction with Article 21 of the Charter of Fundamental Rights,**

must be interpreted as not precluding national legislation which provides that periods of apprenticeship undertaken with a national local authority are to be taken into account in their entirety, for the purposes of determining the comparison reference date, only where the civil servant concerned was recruited by the State after a certain date, whereas half of periods of apprenticeship are to be taken into account, in being subject to a flat-rate deduction, where the civil servant concerned was recruited by the State before that date.

[Signatures]

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* Language of the case: German.