Court of Justice of the European Union
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Press and Information

Judgment in Case C-542/08
Friederich G. Barth v Bundesministerium für Wissenschaft und Forschung

A Member State may make claims for payment of special length-of-service increments, denied to migrant workers on the basis of the application of a domestic law incompatible with Community law, subject to a limitation period

Such a limitation rule is not contrary to the principles of equivalence and effectiveness

Community law[1] provides that a worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work.

Friedrich G. Barth, a German national, was employed as a professor at the University of Frankfurt am Main (Germany), and then in 1987 he was appointed professor at the University of Vienna (Austria). By that appointment, he also acquired Austrian nationality.

Since the period of service completed by Dr Barth in Germany was not taken into account for the purposes of calculating the special length-of-service increment under the Austrian Law on Salaries, he did not receive that increment.

In the *Köbler* judgment of 30 September 2003[2], the Court held that such a law requiring 15 year's experience completed solely in Austrian universities, for the purpose of the grant of the special length-of-service increment taken into account in the calculation of retirement pensions for university professors, constitutes an obstacle to freedom of movement for workers prohibited by the EC Treaty. Since the Austrian Law on Salaries was amended following that judgment, Dr Barth applied in 2004 for the adjustment of his special length-of-service increment so that account be taken of the period during which he had worked at the University of Frankfurt am Main. The decision issued following that administrative appeal recognised his right to that special length-of-service increment as from 1 January 1994 and that the adjustment could take effect for remuneration purposes only as from 1 October 2000, pursuant to the application of a limitation rule.

The Verwaltungsgerichtshof (Austrian Administrative Court), before which Dr Barth brought an appeal against that decision, wishes to ascertain whether European Union law precludes national legislation making claims for payment of special length-of-service increments – which a worker who had exercised his rights to freedom of movement was denied, prior to the delivery of the *Köbler* judgment – subject to a three-year limitation period, which may be extended by nine months.

The Court notes, first, that that limitation period under Austrian Law constitutes a procedural condition governing an action intended to ensure that a right derived by an individual from European Union law is safeguarded. Next, it finds that the law of the European Union does not regulate the question as to whether the Member States may, in such circumstances, provide for a limitation period. Therefore, it is for the domestic legal system of each Member State to lay down such a procedural rule, provided, first, that the rule is not less favourable than those governing

[1] Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475).
[2] Case C-224/01 see Press Release No 79/03

similar domestic actions (principle of equivalence) and, second, that it does not render in practice impossible or excessively difficult the exercise of rights conferred by European Union law (principle of effectiveness).

First, the Court notes that a limitation rule such as that laid down by Austrian law applies both to actions intended to ensure that the rights derived by individuals from European Union law are safeguarded under domestic law and to domestic actions and that the limitation rules applicable to each of those two types of action are identical.

In these circumstances, a three-year limitation period, extended by a nine-month period, cannot be regarded as being contrary to the principle of equivalence.

Second, the Court recalls that it has stated that European Union law does not preclude national legislation which lays down reasonable time-limits for bringing proceedings in the interests of legal certainty which protects both the individual and the authorities concerned. Such time-limits are not liable to make it in practice impossible or excessively difficult to exercise the rights conferred by European Union law. In that regard, a national limitation period of three years appears to be reasonable.

Therefore, the limitation rule applied against Dr Barth cannot be regarded as being contrary to the principle of effectiveness.

Finally, the Court considers that, in the circumstances of the present case, the application of a limitation period does not altogether deprive a person such as Dr Barth of the right to obtain an increment which, in breach of provisions of European Union law, had not been granted to him. Moreover, applying such a limitation period cannot be considered to constitute indirect discrimination against a worker and a restriction on the freedom of movement for workers.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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