

SUMMARY

## **<strong>ECJ 9 September 2015, case C-20/13  (Daniel Unland - v - Land Berlin), Age discrimination</strong>**

### **Facts**

Before 1 August 2011, federal civil servants were paid according to age groups. Under the law as it stood at that time (“the old law”), pay increased with age. This was age discriminatory. As from 1 August 2011, in order to comply with the rules on age discrimination, the pay system was changed. A federal civil servant hired on or after that was placed on the relevant salary scale according to his relevant experience and then promoted according to experience. The new system is not age discriminatory. Judges in the Berlin area who were already in post on 1 August 2011 (“existing judges”) were reclassified, benefitting from a transition arrangement. Basically, this arrangement provided that existing judges were placed on the new salary scale on the step most closely corresponding to the salary they had immediately preceding the reclassification. This perpetuated the age discrimination existing before 1 August 2011. However, in its 2014 judgment in the Specht case (C-501/12), the ECJ found the transitional rules to be objectively justified.

Whereas Specht was a regular civil servant, Mr Unland was a judge. He was appointed a judge at age 29 and was 35 on 1 August 2011. He claimed that the special transitional rules for judges in the Berlin area discriminated on the basis of age. The facts of the matter are complicated, the ECJ’s ruling does not make clear what exactly the facts were and the ECJ ruled without the benefit of an opinion by an Advocate-General. It would seem that the following was the case.

Under the pay scale rules for Berlin judges (“the new law”), an individual who is appointed as a judge without relevant previous experience is placed on step 1 of the pay scale. After three years, under normal circumstances, he is promoted to step 2. Two years later he moves up to step 3 and after two more years he reaches step 4. Moving up to step 5 takes three years and from step 9 it takes 4 years to climb to the next step on the scale. In other words, judges in the

early stages of their career (steps 2 and 3) progress faster in their career than judges further on in their career (from step 4) or at the very start of their career (step 1). Mr Unland did not challenge the new law as such.

The transitional rules for Berlin judges seem to provide that judges who were on step 2 or 3 on 1 August 2011, and who were as a rule aged between 31 and 39, benefit less from the new pay system than judges who were already on step 4 or above, and who were therefore older.

Mr Unland applied to the Berlin provincial government to be remunerated at a higher level than he was paid.

### **National proceedings**

When his application was turned down, Mr Unland brought proceedings. They were unsuccessful in two instances. He appealed to the Verwaltungsgericht Berlin. It referred eleven questions to the ECJ. As most of those questions were already answered in *Specht*, this summary is limited to questions 9 and 10. They are, essentially, whether Articles 2 and 6(1) of Directive 2000/78 preclude transitional rules such as those outlined above.

### **ECJ's findings**

The new law, which benefits judges aged between 31 and 39, was intended to make the position of judge more attractive than previously, by ensuring inter alia that income increases more rapidly at the beginning of a judge's career, whilst ensuring that no existing judge suffered a drop in salary, either in the immediate short term or in his career as a whole. The idea behind this is twofold. First, it reflects the fact that professional experience increases fastest during the early career. Secondly, it addresses the fact that the financial needs of judges in this age group are greatest (§50-61).

The transitional rules at issue compensate for the effect that the new law would have on existing judges. Without those rules, judges aged 31-39 would advance rapidly in their career even though they were already protected by the general transitional provision. Conversely, older judges would suffer reduced career advancement. The complexity of the system derives from the fact that the legislature was concerned to ensure that no category of judges should be placed in an advantageous, or excessively disadvantageous, position as a result of the reclassification. In the light of the broad discretion enjoyed by Member States in their choice, not only to pursue a particular aim in the field of social and employment policy, but also in the means to achieve such an aim, it does not appear unreasonable for the Berlin legislature to have adopted the transitional rules at issue (§62).

## **Ruling**

Article 3(1)(c) of Council Directive 2000/78/EC must be interpreted as meaning that pay conditions for judges fall within the scope of that directive.

Articles 2 and 6(1) of Directive 2000/78 must be interpreted as precluding a provision of national law, such as that at issue in the main proceedings, under which the basic pay of a judge is determined at the time of his appointment solely according to the judge's age.

Articles 2 and 6(1) of Directive 2000/78 must be interpreted as not precluding a provision of national law, such as that at issue in the main proceedings, establishing the detailed rules governing the reclassification of existing judges within a new remuneration system under which the pay step that they are now to be allocated is determined solely on the basis of the amount received by way of basic pay under the old remuneration system, notwithstanding the fact that that system was founded on discrimination based on the judge's age, provided the different treatment to which that law gives rise may be justified by the aim of protecting acquired rights.

Articles 2 and 6(1) of Directive 2000/78 must be interpreted as not precluding a provision of national law, such as that at issue in the main proceedings, laying down detailed rules for the career progression of judges already in post before the entry into force of that law within a new remuneration system and securing faster pay progression from a certain pay step onwards for such judges who had reached a certain age at the time of transition to the new system than for such judges who were younger on the transition date, provided the different treatment to which that law gives rise may be justified in the light of Article 6(1) of that directive.

In circumstances such as those of the case before the referring court, EU law does not require judges who have been discriminated against to be retrospectively granted an amount equal to the difference between the pay actually received and that corresponding to the highest step in their grade. It is for the referring court to ascertain whether all the conditions laid down by the case-law of the Court are met for Germany to have incurred liability under EU law.

EU law must be interpreted as not precluding a national rule, such as the rule at issue in the main proceedings, which requires national judges to take steps, within relatively narrow time-limits — that is to say, before the end of the financial year then in course — to assert a claim to financial payments that do not arise directly from the law, where that rule does not conflict with the principle of equivalence or the principle of effectiveness. It is for the referring court to determine whether those conditions are satisfied in the main proceedings.

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**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2015-09-09

**Case number:** C-20/13