Headnotes

1. The remuneration of civil servants whose emoluments are governed by pay scheme "A" (*Besoldungsordnung A*) pursuant to sections 27 and 28 of the Federal Civil Servants' Remuneration Act in its 2002 version (BBesG F 2002, *Bundesbesoldungsgesetz in der Fassung von 2002*) is directly discriminatory on grounds of age. It is not an available option to categorise the affected civil servants in a higher grade of seniority, based on their length of service, within their wage bracket, or even in the highest such grade of seniority, in order to compensate for this unjustified discrimination. Since the entirety of all civil servants may potentially be affected by this discrimination, there is no valid frame of reference that can be relied on as a basis.

2. The pre-requisites of the liability claim under EU law for the violation by sections 27 and 28 of the Federal Civil Servants' Remuneration Act in its 2002 version of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, have been met only from 8 September 2011 onwards, when the Court of Justice of the European Union handed down its judgment in the matter of Hennigs and Mai (case numbers C-297/10 and C-298/10).

3. The no-fault claim to reasonable and appropriate compensation pursuant to section 15 (2) of the General Equal Treatment Act (AGG, *Allgemeines Gleichbehandlungsgesetz*) forms the basis for the staged system of sanctions stipulated by the General Equal Treatment Act by way of implementing article 17 of Council Directive 2000/78/EC.

4. Section 15 of the General Equal Treatment Act may also be relied on as a basis for a claim also in those cases in which the discrimination results from the correct implementation of a provision made in law.

5. The damage of a non-pecuniary nature, which must be given in order for section 15 (2) of the General Equal Treatment Act to apply, as a rule will be given if there is a case of unjustified less favourable treatment for one of the grounds set out in section 1 of the General Equal Treatment Act.

6. The requirement of raising a claim in writing, as stipulated by section 15 (4) of the General Equal Treatment Act, is met wherever the obligor will be able to obtain from the written communication from an employee that employee's view as to his or her being entitled to claims pursuant to the General Equal Treatment Act based on conduct by the employer.

7. Where a situation is uncertain and unclear in terms of the law, the preclusive time limit stipulated by section 15 (4) of the General Equal Treatment Act will also begin running only once that legal situation has been objectively cleared up by a ruling issued by a supreme court.

8. Where the civil servant has respected the preclusive time limit stipulated by section 15 (4) of the General Equal Treatment Act, the principle will not have supplemental application that any claims not directly enshrined in the law must be asserted promptly.

9. Where the claim pursuant to section 15 of the General Equal Treatment Act results from a discriminatory pay scheme, the claim shall be directed against the governmental authority acting as that civil servant’s employer also in those cases in which said authority does not have the legislative power concerning the wages paid to civil servants.

10. It is true that the simple transfer of the amounts in which civil servants, who had already been appointed as such at the time the new pay scheme provision entered into force, are entitled to payment will perpetuate the discrimination to which they are subject based on their age. However, this provision is legitimate within the sense of article 6 (1) of Council Directive 2000/78/EC since it serves the civil servants affected in protecting their vested rights and since their retroactive classification to a pay scheme that is compliant with EU law would entail an excessive use of administrative resources, while being exceptionally complex and involving a high risk of errors (following the judgment handed down by the Court of Justice of the European Union on 19 June 2014 - C-501/12, Specht - (…)).

Judgment of 30 October 2014 - BVerwG, 2 C 6.13

Sources of law

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, articles 2, 6, 17
Federal Civil Servants' Remuneration Act in its 2002 version, BBesG F 2002, Bundesbesoldungsgesetz in der Fassung von 2002, sections 27, 28
General Equal Treatment Act, AGG, Allgemeines Gleichbehandlungsgesetz, sections 7, 15, 24
Law of the Federal State of Saxony-Anhalt on the Remuneration of Civil Servants, LBesG LSA, Besoldungsgesetz des Landes Sachsen-Anhalt, section 23
Supplementary Law of the Federal State of Saxony-Anhalt on the Remuneration of Civil Servants and their Assistance and Pension Entitlements, BesVersEG LSA, Besoldungs- and Versorgungsrechtsergänzungsgesetz des Landes Sachsen-Anhalt, section 16

Summary of the facts

The claimant claims that his initial classification under the laws governing the remuneration of civil servants, based on his age, placed him at a disadvantage due to his age. By way of obtaining compensation therefor, he is seeking to obtain remuneration according to the highest level within his pay grade.

The claimant, who was born in 1976, has been in the services of the federal state of Saxony-Anhalt as a civil servant since 1995. His seniority for purposes of his remuneration was determined as per 1 June 1997. In the period from 17 August 2006 until 31 May 2008, the claimant was remunerated according to pay grade A 9, level 5, and subsequently, until the end of July 2008, according to level 6. Since 1 August 2008, the claimant has been remunerated according to pay grade A 10, level 6. Upon the Law Restructuring the Laws Governing the Remuneration of Civil Servants of the Federal State of Saxony-Anhalt (BesNeuRG LSA, *Gesetz zur Neuregelung des Besoldungsrechts des Landes Sachsen-Anhalt*) entering into force as of 1 April 2011, the claimant was transferred to level 4a of pay grade A 10 without any change being made to his base salary.

In early September of 2009, the claimant requested that his emoluments from 1 August 2008 onwards be increased to those of the last level in pay grade A 10, that the emoluments pursuant to the last level of pay grade A 9 be granted to him retroactively for the period from 17 August 2006 until 31 July 2008, and that the balance of the amount be disbursed to him.

The Administrative Court found for the action the claimant had brought for failure to act insofar as it determined that the claim to remuneration according to the final level of his respective pay grade was justified on its merits for the period from August 2006 until March 2011. From the period following from April 2011, by contrast, the Administrative Court dismissed the action.

The Higher Administrative Court amended the judgment handed down by the Administrative Court and ordered the defendant to pay to the claimant, for the period from 1 January 2009 until 31 March 2011, an additional base salary in the amount of EUR 9,606.31 and interest accruing to the amount of the supplementary payment at a rate of five percentage points above the base interest rate from 23 December 2009 onwards. In all other regards, the Higher Administrative Court dismissed the action.

Both the claimant and the defendant have brought an appeal on points of law as admitted by the Higher Administrative Court.

Reasons (abridged)

11 The appeal on points of law brought by the claimant is without merit, while that brought by the defendant is unfounded only in part. The judgment handed down by the Higher Administrative Court violates federal law (1.). However, it is in part a correct and proper judgment, albeit for other reasons (section 144 (4) of the Code of Administrative Court Procedure (VwGO, *Verwaltungsgerichtsordnung*)). The claimant is entitled, based on section 15 (2) in conjunction with section 24 no. 1 of the General Equal Treatment Act (AGG, *Allgemeines Gleichbehandlungsgesetz*) of 14 August 2006 (- AGG -, Federal Law Gazette (BGBl., *Bundesgesetzblatt*) I p. 1897), to payment of compensation in the amount of EUR 5,550 due to the violation of the prohibition of discrimination stipulated by section 7 (1) AGG, for the period from 18 August 2006 until 31 March 2011 (2.). By contrast, the claimant is not entitled to any claim for the period from 1 April 2011 (3.).

12 1. The Higher Administrative Court has allocated to the claimant, as concerns his remuneration, a higher level of the table of the base salary rates under the pay scheme “A” (*Besoldungsordnung A*) in order to compensate him for the discrimination he has suffered due to his age, on which he has accurately based his case, and accordingly has awarded to him a claim to a higher base salary. This violates federal law.

13 a) The basis for the claimant’s remuneration in the period from August 2006 until late March 2011 is formed by sections 27 and 28 of the Federal Civil Servants’ Remuneration Act (BBesG, *Bundesbesoldungsgesetz*) in the version promulgated on 6 August 2002 (- sections 27 and 28 BBesG in its old version -, BGBl. I p. 3020). Initially, these provisions were in force as federal law (article 125a (1) first sentence of the Basic Law (GG, *Grundgesetz*), section 85 BBesG) after legislative power concerning the remuneration of the civil servants of the federal states was transferred to the federal state of Saxony-Anhalt as

per 1 September 2006, and subsequently continued to apply from 1 August 2007 as federal state law (section 1 (2) first sentence of the Law of the Federal State of Saxony-Anhalt on the Remuneration of Civil Servants (LBesG LSA, *Besoldungsgesetz des Landes Sachsen-Anhalt*), in the version of the Law Amending the Law of the Federal State of Saxony-Anhalt on the Remuneration of Civil Servants and their Assistance and Pension Entitlements (BesVersEG LSA, *Gesetz zur Änderung landesbesoldungs- and versorgungsrechtlicher Vorschriften*) of 25 July 2007, Saxony-Anhalt Act and Regulation Gazette (GVBl. LSA, *Gesetz- and Verordnungsblatt des Landes Sachsen-Anhalt*) p. 236).

14 According to sections 27 and 28 BBesG in its old version, the grade of seniority determined on the basis of a civil servant's age for purposes of his or her remuneration constitutes the nexus for the first allocation to a level included in the table of the base salary rates. Following such classification, the base salary of the civil servant will rise in keeping with his or her period of service as a civil servant and his or her performance within said service. As a consequence, the base salary earned by two civil servants who were appointed at the same time and who have the same or comparable professional experience, but are not the same age, will differ solely on the basis of the age they had at the time of their appointment (Court of Justice of the European Union (ECJ), judgment of 19 June 2014 - C-501/12, Specht - (…)).

15 b) This remuneration system leads to an unjustified difference in treatment within the meaning of article 2 (1) and (2) letter a of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (- Directive 2000/78/EC -, OJ L 303 p. 16). The remuneration terms of the civil servants of the Member States fall within the personal scope of application of this Directive (ECJ, judgment of 19 June 2014 see above, para. 37).

16 When a civil servant is first allocated to a level within his or her pay grade, this is tied to his or her age and thus results in a difference in treatment that is based directly on the ground of age. This is not justified by article 6 (1) of

Directive 2000/78/EC. While tying any increases of remuneration to the professional experience gained in the course of service constitutes a legitimate aim of compensation policy, the system established by sections 27 and 28 BBesG in its old version goes beyond what is necessary to achieve this legitimate aim. The reason is that this system results in an older civil servant, who has gained no professional experience whatsoever, being classified at a higher pay level, at the time of his or her first appointment as a civil servant, simply as a consequence of his greater age (ECJ, judgment of 19 June 2014 see above, para. 50 et seq.).

17 When the General Equal Treatment Act entered into force on 18 August 2006, which also served to transpose into national law Directive 2000/78/EC (Bundestag printed paper (BT-Drs., *Bundestagsdrucksache*) 16/1780, p. 1) and the regulations of which apply, pursuant to section 24 no. 1 AGG, mutatis mutandis to civil servants, taking account of their particular legal status, this did nothing to change this directly discriminatory effect of sections 27 and 28 BBesG in its old version. It is true that from 18 August 2006 onwards, these provisions violated the prohibition of discrimination stipulated by section 7 (1) AGG. However, section 7 (2) AGG, according to which any provisions in agreements that violate the prohibition of discrimination are invalid, covers solely provisions of collective agreements and individual agreements, as well as unilateral measures taken by an employer – it does not cover stipulations of statutory law. Section 7 (2) AGG implements article 16 letter b of Directive 2000/78/EC, according to which a violation against the prohibition of discrimination will mean that the corresponding clause in the individual or collective agreements will be null and void (draft legislation of the Federal Government, BT-Drs. 16/1780 p. 34). The legal consequence of a provision of statutory law violating the prohibition of discrimination is the obligation to provide for compensation and damages pursuant to section 15 (1) and (2) AGG.

18 c) By way of compensating for this difference in treatment, the Higher Administrative Court has grouped the claimant, assuming that he was appointed at the latest possible time as a civil servant for a probationary period of service (*Beamtenverhältnis auf Probe*), in a higher grade of seniority, based on the length of service. However, this type of “modifying” application of the existing

laws on the remuneration of civil servants is not an available option since the frame of reference created as a whole by sections 27 and 28 BBesG in its old version has discriminatory effect and thus no longer can be relied on.

19 It is true that the requirement to interpret domestic law such that it is compatible with EU law calls for a domestic court to do everything in its power, having regard to the whole body of rules of domestic law and applying the methods of interpretation recognised under it, in order to ensure the full effectiveness of EU law and in order to achieve the result sought by the Directive (established case-law; ECJ, judgment of 5 October 2004 - C-397/01 to C-403/01, Pfeiffer et al. (…) para. 114). However, it is not possible to interpret sections 27 and 28 BBesG in its old version in conformity with EU law. The difference in treatment inherent to this remuneration system will affect every civil servant at the time he or she is first appointed as such, meaning that the resulting direct discrimination will potentially affect all civil servants. This means that from the outset, there is no valid frame of reference by which a discrimination-free treatment of the claimant could be oriented (ECJ, judgment of 19 June 2014 see above, para. 96).

20 Moreover, were the claimant to be allocated to a higher level within the system governed by sections 27 and 28 BBesG in its old version, this would devalue the reward for professional experience already gained, which reward the legislator intended to achieve by these provisions. According to the case-law of the Court of Justice, the period of service that a civil servant in fact has already rendered may serve as a factor in creating distinctions under the laws governing the remuneration of civil servants. As a general rule, relying on the criterion of seniority is suited to achieving the legitimate objective of rewarding the professional experience that enables an employee to perform his or her duties better (ECJ, judgment of 3 October 2006 - C-17/05, Cadman (…) paras. 34 et seqq.). However, by assigning a civil servant to a higher level within the system of sections 27 and 28 BBesG in its old version in order to compensate for his or her having been discriminated against on grounds of age would then create a disadvantage for those civil servants who have reached this level permissibly under EU law based on their professional experience (cf. the

Opinion of Advocate General Bot of 28 November 2013 - C-501/12, Specht - para. 100).

21 Since there is no valid frame of reference, the case-law developed by the Court of Justice in order to ensure the principle of equality cannot be applied here, which stipulates that until the difference in treatment is alleviated, the same benefits must be granted to the members of the group being discriminated against as are enjoyed by the members of the privileged group (ECJ, judgments of 26 January 1999 - C-18/95, Terhoeve - Slg. 1999, I-345 para. 57 with further references and of 22 June 2011 - C-399/09, Landtová (…) para. 51).

22 2. However, the judgment handed down by the Higher Administrative Court turns out to have been proper and correct, in part, for other reasons (section 144 (4) VwGO). The claimant may claim compensation for the period from 18 August 2006 until late March 2011 in the amount of EUR 5,550. While this follows neither from Directive 2000/78/EC (a) nor from the liability claim under EU law (b), the claimant is entitled to this claim based on section 15 (2) AGG (c), which entered into force on 18 August 2006.

23 a) Pursuant to article 17 of Directive 2000/78/EC, the Member States are the ones determining the sanctions that are to be meted out in the event of their domestic regulations concerning the application of this Directive being violated, and they are the ones to take all the necessary measures in order to warrant their implementation. In this context, the sanctions, which may also comprise the payment of compensation to victims, must be effective, proportionate and dissuasive.

24 These requirements have been transposed into German national law by section 15 (2) AGG (Federal Administrative Court (BVerwG, *Bundesverwaltungsgericht*), judgment of 25 July 2013 - 2 C 12.11 - Rulings of the Federal Administrative Court (BVerwGE, *Entscheidungen des Bundesverwaltungsgerichts*) 147, 244 para. 57 et seq.). It bears noting that article 17 of Directive 2000/78/EC does not give rise to a direct claim of the

claimant to payment of compensation or of an amount of money equal to the difference between the pay actually received and that corresponding to the highest level of his pay grade (ECJ, judgment of 19 June 2014 see above, para. 108).

25 b) Likewise, it is not possible for the claimant to derive any claims from the liability claim under EU law as concerns the period until 1 April 2011. The pre-requisites therefor are fulfilled only for the period following the issuance of the Court of Justice's judgment in the case of Hennigs and Mai on 8 September 2011 (C-297/10 and C-298/10 (…)).

26 The liability claim under EU law is premised on the condition that the provision of EU law that has been violated has as its purpose the conferral of rights to the injured parties, that the violation of this norm is sufficiently qualified, and that there is a direct causal link between this violation and the damage caused to the injured party (established case-law; ECJ, judgment of 19 June 2014 see above para. 99).

27 In the case at hand, both the first and the third pre-requisite are given. Article 2 (1) of Directive 2000/78/EC, which, read together with article 1, generally and unequivocally prohibits any direct or indirect discrimination in employment or occupation that is not objectively justified, grants rights to the individual that he or she can assert vis-à-vis the Member States. Furthermore, there is a direct causal link between the violation of the prohibition of discrimination and the damage that the claimant has suffered (ECJ, judgment of 19 June 2014 see above, paras. 101 and 106).

28 By contrast, the pre-requisite of the sufficiently qualified violation of EU law has not been met.

29 A violation of EU law is considered sufficiently qualified if the relevant case law of the Court of Justice manifestly has been disregarded (ECJ, judgment of 25 November 2010 - C-429/09, Fuß (…) para. 51 et seq. with further references; BVerwG, judgment of 26 July 2012 - 2 C 29.11 - BVerwGE

143, 381 para. 18). Accordingly, it is to be assumed that there has been a sufficiently qualified violation of EU law in the period following the judgment of the Court of Justice in Hennigs and Mai on 8 September 2011. The reason is that this judgment has made clear to the Member States the substantive meaning and the implications of article 2 (2) and article 6 (1) of Directive 2000/78/EC with regard to a remuneration system that is comparable to that provided for by sections 27 and 28 BBesG in its old version (ECJ, judgment of 19 June 2004 see above, para. 104).

30 It is incumbent on the domestic court to determine the point in time at which the violation of EU law is sufficiently qualified. However, there are no sufficient indications in the case at hand that would permit the assumption to be made that the violation of EU law had been sufficiently qualified already before the Court of Justice issued its judgment on 8 September 2011. According to the established case-law of the Court of Justice, the question of whether a violation by a Member State in the sense specified above is already sufficiently qualified will be premised on the respective status of the adjudication by the domestic courts of that Member State (ECJ, judgment of 5 March 1996 - C-46/93 and C-48/93, Brasserie du Pêcheur and Factortame (…) para. 63). As early as in the year 2010, the Federal Labour Court (BAG, *Bundesarbeitsgericht*) called upon the Court of Justice for the interpretation of provisions made in Directive 2000/78/EC to obtain guidance for the matter of Hennigs and Mai in proceedings that concerned a comparable allocation of basic remuneration in the individual remuneration grades based on the age of the person concerned (BAG, decision of 20 May 2010 - 6 AZR 148/09 (A) – Rulings of the Federal Labour Court (BAGE, *Entscheidungen des Bundesarbeitsgerichts*) 134, 327). In the year 2010 and also thereafter, the German administrative courts have ruled in repeated instances that the factor of age in the system provided for by sections 27 and 28 BBesG in its old version constituted nothing but a compounding calculation factor, meaning that there was no discrimination on grounds of age to begin with (…).

31 c) For the period following the entry into force of the General Equal Treatment Act on 18 August 2006 until the end of March 2011, the claimant is

entitled to compensation of his damages pursuant to section 15 (2) in conjunction with section 24 no. 1 AGG in the total amount of EUR 5,550 (EUR 100 per month).

32 aa) It is irrelevant in this context that the claimant has failed, both in the proceedings before the authority and in those before the courts, to expressly rely on section 15 AGG as the basis for his claim. A court is not bound to the stipulations of the law a claimant has cited, and instead is under obligation to review the claim being raised in the context of the matter in dispute based on every legal aspect (iura novit curia).

33 The provision made as to sanctions in the General Equal Treatment Act comprehensively transposes into national German law the requirements of Directive 2000/78/EC (BVerwG, judgment of 25 July 2013 - 2 C 12.11 - BVerwGE 147, 244 para. 57 et seqq.). Article 17 of Directive 2000/78/EC does not prescribe any specific sanctions that the Member States are to mete out. However, any domestic provision on sanctions created by way of implementing EU law must afford factual and effective legal protection of the rights derived from the Directive. The severity of the sanctions must be in keeping with the seriousness of the violations that they are to punish, in particular by ensuring a truly dissuasive effect. Concurrently, however, the sanctions must comply with the general principle of proportionality; a merely symbolic sanction will not suffice for the Directive to have been properly and effectively implemented (ECJ, judgment of 25 April 2013 - C-81/12, Asociatia Accept - para. 63 et seq. with further references).

34 The staged system of sanctions created by the General Equal Treatment Act is based on the stipulations of section 15 (2) AGG. As a rule, the requisite damage of a non-pecuniary nature will be given in the case of an unjustified less favourable treatment on a ground cited in section 1 AGG. The legislator has taken account of the requirement made in article 17 second sentence of Directive 2000/78/EC to ensure a dissuasive effect of the sanction by creating the characteristic of reasonable and appropriate compensation. The claim pursuant to section 15 (2) AGG is a no-fault claim. This means that the

requirement under EU law is met: that the liability of the party causing discrimination not in the least may be made conditional on proof of fault or on the absence of any ground discharging such liability (ECJ, judgment of 22 April 1997 - C-180/95, Draehmpaehl - (…) para. 17 and 22 with reference being made to the judgment of 8 November 1990 - C-177/88, Dekker - (…) para. 22 on Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions).

35 This is contrasted by the obligation of an employer to compensate for the pecuniary damage – as a rule, this will be significantly higher – being premised on the culpability of the obliged party, which follows the example of section 280 (1) second sentence of the Civil Code (BGB, *Bürgerliches Gesetzbuch*). This structure as well corresponds to the requirement of proportionality (article 17 second sentence of Directive 2000/78/EC). The reason is that it is a significantly more serious infringement that must be countered by stronger sanctions for an employer to be responsible for the violation of the prohibition of discrimination, or to have even intentionally committed such a violation.

36 bb) Relying on section 15 AGG as the basis for a claim to payment to be given for the claimant due to discrimination on grounds of his age is also not contravened by the fact that this discrimination occurred by the correct and proper execution of a provision of statutory law (sections 27 and 28 BBesG in its old version). (…)

44 dd) As a consequence of section 15 (2) in conjunction with section 24 no. 1 AGG, the claimant is entitled, for the period from 18 August 2006 until the end of March 2011, to compensation in the amount of EUR 100 per month.

45 (1) Pursuant to section 15 (2) AGG in conjunction with section 24 no. 1 AGG, a civil servant is entitled to demand reasonable and appropriate compensation in money for a damage that is non-pecuniary. The claim pursuant to section 15 (2) AGG does not require proof to be provided of a specific non-

pecuniary damage, i.e. no personally onerous consequence of a discrimination need be determined. Instead, this type of damage will be given already in the case of an unjustified less favourable treatment on one of grounds cited in section 1 AGG (draft legislation of the Federal Government, BT-Drs. 16/1780 p. 38; BVerwG, judgment of 3 March 2011 - 5 C 16.10 - BVerwGE 139, 135 para. 14; BAG, judgment of 22 January 2009 - 8 AZR 906/07 - BAGE 129, 181 para. 74 through 76). This perspective corresponds to the function that section 15 (2) AGG has in the system of sanctions defined by the General Equal Treatment Act. Article 17 of Directive 2000/78/EC requires that any violation of the prohibition of discrimination be punished by an appropriate and proportionate sanction. In this way, it is to be ensured that the rights derived from the Directive are effectively protected. (…)

61 (5) By way of providing compensation for the discrimination on grounds of age, the Senate regards a lump sum of EUR 100 per month to be appropriate in the sense of section 15 (2) in conjunction with section 24 no. 1 AGG.

62 As has been done in the provision stipulating the determination of the amount of reasonable damages, section 253 (2) BGB, the determination of the amount of compensation is left to the court also by section 15 (2) AGG, whereby the court is to take account of the special features of each individual case (draft legislation of the Federal Government, BT-Drs. 16/1780 p. 38). This includes the nature and severity of the discrimination, its duration and consequences, the occasion and the motivation for taking the actions concerned, the degree to which the employer was responsible, any compensation already provided or any satisfaction already received, and whether or not the matter constitutes recurrent conduct. Furthermore, the purpose pursued by the sanction provided for by the statutory provision is to be taken into account, meaning that the amount is to be determined according to what is necessary in order to obtain the dissuasive effect. It is to be noted in this context that the compensation must be suited to have a dissuasive effect on the authority acting as that civil servant’s employer and that it must be reasonably proportionate to the damage suffered (cf. BAG, judgments of 17 December 2009 - 8 AZR 670/08 - (…); of 22 January 2009 - 8 AZR 906/07 - BAGE 129,

181 para. 82 with further references; and of 23 August 2012 - 8 AZR 285/11 (…).

63 In section 198 (2) third sentence of the Courts Constitution Act (GVG, *Gerichtsverfassungsgesetz*), as well as in section 97a (2) third sentence of the Federal Constitutional Court Act (BVerfGG, *Bundesverfassungsgerichtsgesetz*), the legislator has determined that compensation is to be provided – where court proceedings have an excessively long duration – for a disadvantage that is not pecuniary in nature. In keeping with these provisions, the Senate regards compensation in the amount of EUR 100 per month to be reasonable where the claim under section 15 (2) AGG is concerned. (…)