

## Press release

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### **The General Maximum Age Limit for Expert Inspectors pursuant to the Building Law of the Federal State of Hesse is Permissible**

The Federal Administrative Court in Leipzig decided today that neither the General Equal Treatment Act (AGG, *Allgemeines Gleichbehandlungsgesetz*) nor European Union law prohibit the legislator of the federal state of Hesse from establishing a general maximum age limit of 70 years for expert inspectors for technical equipment and installations in certain buildings, like hospitals, schools, or meeting places.

In October 2011, the applicant, who is now 71 years old, was approved as an expert inspector for technical equipment and installations in buildings by the Chamber of Engineers of the federal state of Hesse. He challenges section 7 (1) no. 2 of the Ordinance of the Federal State of Hesse on Authorised Inspectors and Expert Inspectors pursuant to the Building Law of the Federal State of Hesse (HPPVO, *Hessische Verordnung über Prüfberechtigte und Prüfsachverständige*); according to which the approval as an expert inspector expires when they reach the age of 70. The applicant claims that the maximum age limit violates the prohibition of discrimination on grounds of age. The Higher Administrative Court of the federal state of Hesse dismissed the application for judicial review (*Normenkontrollantrag* (application for judicial review with respect to the compatibility of a legal provision with higher-ranking law pursuant to § 47 of the Administrative Court Procedure) The Higher Administrative Court held that the maximum age limit was unobjectionable.

The Federal Administrative Court has confirmed the judgment of the court below and has denied the applicant's appeal on points of law. While it is true that the general maximum age limit for expert inspectors constitutes a direct discrimination on grounds of age within the meaning of the General Equal Treatment Act, this is legitimised by the reservation stipulated in article 2 (5) of the European Equal Treatment Directive 2000/78/EC. Establishing an age limit for expert inspectors serves the interests of buildings security, the protection of life and health of both the building occupants and the general public (construction safety), and, therefore, the protection of public safety, which constitutes a legitimate objective. For the purpose of guaranteeing construction safety, such an age limit is also necessary. It is suitable to contribute to construction safety as it excludes the age-related higher risk of mistakes in the course of the inspection activities. The age limit meets the requirements of coherent and systematic legislation, because expert inspectors from other federal states and other member states of the European Union who are also older than 70 years are equally excluded from working in the federal state of Hesse. While a flexible age limit, which is based on an individual review of the capability of the respective expert instructor, constitutes a measure which is less severe in comparison to the general maximum age limit, such measure is not equally effective with respect to the purpose of guaranteeing construction safety. After all, the maximum age limit of 70 years does not constitute a direct burden for the applicant. It exceeds both the general retirement age as well as the normal retirement age of 67 years for officials in the technical services of the construction supervision authorities, whose professional activities are similar to those of the expert inspector.

Excerpt from the Ordinance of the Federal State of Hesse on Authorised Inspectors and Expert Inspectors pursuant to the Building Law of the Federal State of Hesse; HPPVO, Hessische Verordnung über Prüfberechtigte und Prüfsachverständige nach der Hessischen Bauordnung)

#### Section 7 Expiration, Revocation, and Withdrawal of the Approval

(1) The approval expires if the person who is an authorised inspector or an expert inspector

1. ...
2. has reached the age of 70,
3. ...
4. ...

#### **Excerpt from the Ordinance on the Inspection of Technical Equipment and Installations in Buildings (Technical Inspection Order, TPrüfVO, *Technische Prüfverordnung*)**

#### Section 1 Scope of Application

This Ordinance shall apply to the inspection of technical equipment and installations in

1. high-rise buildings,
2. retail premises whose sales areas and shopping malls consist of a gross floor area of more than 2000 square meters,
3. meeting places with meeting spaces which, individually or in total, while having joint emergency escape routes, accommodate more than 200 visitors; as to museums and similar buildings, this Ordinance only applies to meeting spaces that individually accommodate more than 200 visitors, and their emergency escape routes,
4. hospitals,
5. bars and restaurants with more than 400 visitor spaces and accommodation sites with more than 100 beds for guests,
6. general education schools and vocational schools, provided that they do not exclusively serve the purpose of educating adults,
7. garages with a floor space of more than 1000 square meters including the traffic areas, and
8. other special structures pursuant to section 2 (8) of the Building Law of the Federal State of Hesse, to the extent to which the inspection is necessary for the prevention of hazards and was imposed on a case-by-case basis in accordance with section 45 (1) in conjunction with section 45 (2) no. 17 of the Building Law of the Federal State of Hesse.

## Section 2 Inspections

(1) The following installations have to be inspected for their effectivity and operational safety by expert inspectors officially approved by the building control authorities:

1. ventilation systems, except such systems whose ventilation lines do not lead through ceilings or walls for which, for reasons of integrity, it is stipulated that they have to be fire-resistant.

2. CO alarm systems,

3. smoke and heat extraction systems as well as machine equipment for the purpose of keeping emergency escape routes free from smoke,

4. ...