

Bundesverwaltungsgericht, Urteil vom 26. Januar 2006, - Az. 2 C 43.04 -

The plaintiff, a civil servant, lived in a civil union (“registered partnership”) with another woman. When she applied for a special household allowance provided for by § 40 of the German law governing the salary of civil servants (Bundesbesoldungsgesetz - BBesG) the competent authority refused to grant the allowance on the grounds that the respective provision was only applicable to civil servants living in a civil marriage.

The plaintiff brought proceedings submitting *inter alia* that § 40 BBesG violated Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

The action of the plaintiff was dismissed in all instances.

The Federal Administrative Court as supreme instance argued that pursuant to its clear wording § 40 BBesG does not apply to civil unions. As the legislative process shows the legislator was aware of the problem but has deliberately decided to grant the allowance exclusively to civil servants married in the traditional sense. As regards infringement of the principle of equal treatment of employees irrespective of their sexual orientation the Court pointed out that it is not the sexual orientation of the couple which determines whether the household allowance is granted but the legal nature of the ties between the civil servant and her registered partner. Community law does not oblige the national legislator to treat civil unions completely equivalent to civil marriages. Pursuant to recital 22 in the preamble to Directive 2000/78/EC the Directive is without prejudice to national laws on marital status and the benefits dependent thereon. Moreover, the ECJ has ruled that distinct provisions for civil marriages and other forms of partnerships are compatible with community law (Case C-122/99 P and 125/99 P, judgment of 31 May 2001).