

# Press Release

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30 October 2014

## **Claims of civil servants to payments for impermissible, age-dependent remuneration are with merit, albeit only to a limited extent**

Subject to certain pre-requisites being given, civil servants are entitled to compensation where, contrary to the stipulations of “Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation,” the amount of their emoluments depended solely on their age. This is the decision handed down by the Federal Administrative Court (BVerwG, *Bundesverwaltungsgericht*) in Leipzig today.

The claimants are civil servants or members of the German armed forces whose remuneration is governed by the corresponding laws of the federal states of Saxony-Anhalt and Saxony, respectively of the Federation. The statutory provisions of the pay scheme that were applicable earlier (sections 27 and 28 of the Federal Civil Servants’ Remuneration Act (BBesG, *Bundesbesoldungsgesetz*) in its old version) tied the initial classification of a civil servant within the table of emoluments, which increase over the period of service, solely to his or her age. According to the judgment handed down by the Court of Justice of the European Union (ECJ) of 19 June 2014 (C-501/12 et al., *Specht*), this subjects younger civil servants to unjustified discrimination on grounds of their age.

The Federal Administrative Court has awarded to some of the civil servants compensation in the amount of EUR 100 per month, this being dependent on the respectively applicable laws governing the remuneration of civil servants and on the time at which the claim was asserted.

According to the law now in force, civil servants who are newly appointed will be grouped into the first level in their pay grade. Subsequently, their base salary will increase in keeping with the length of the period of their service; this nexus between the remuneration and the time spent in the service is compliant with the requirements of EU law. According to the applicable laws of the federal states of Saxony-Anhalt and Saxony governing the remuneration of civil servants, the present civil servants will transition into this new system. The decisive factor is, in principle, the grade of seniority based on the length of service that the civil servants had attained pursuant to the laws previously in force. The perpetuation of the discriminatory effect given thus far is justified, however, according to the above-cited judgment handed down by the Court of Justice of 19 June 2014.

It is for this reason that civil servants of the federal state of Saxony-Anhalt are not entitled to any claims to compensation for the period from 1 April 2011. The same applies to civil servants of the federal state of Saxony for the period from 1 September 2006. As by this date, in the federal state of Saxony the new remuneration system has permissibly entered into force with retroactive effect. This provision of the law does not cause any disadvantages to the civil servants affected; moreover, it means that a law has at all come into existence from 1 September 2006 that governs the remuneration of the civil servants of the federal state of Saxony and that is compatible with EU law.

If civil servants have a claim to compensation for the earlier assessment of their emoluments, which was tied to their age, then it is possible to base such claim solely on section 15 (2) of the General Equal Treatment Act (AGG, *Allgemeines Gleichbehandlungsgesetz*). This provision of the law grants a no-fault claim to reasonable compensation in cases in which the prohibition of discrimination on grounds of age was violated. By contrast, already since the Court of Justice handed down its judgment of 19 June 2014, it is not an available option to classify civil servants into a higher level of the respective pay grade, or even the highest level because the impermissible discrimination on grounds of age affects all groups of civil servants. Therefore, there is no longer any valid frame of reference to which the entitlement to equal treatment could be tied. The liability claim under EU law cannot be relied on in this regard, nor does the claim for damages pursuant to section 15 (1) AGG, which is premised on the culpability of the obligor, serve as a basis. The pre-requisites for these claims were met only once the judgment of the Court of Justice of 8 September 2011 (C-297/10 et al., Hennigs and Mai) had been issued.

Section 15 (2) AGG also governs instances in which the violation of the prohibition of discrimination on grounds of age pursuant to section 7 (1) AGG results from the correct application of federal law (in the case at hand, sections 27 and 28 BBesG in its old version). As a consequence of the transitional provisions of the federal states, which are compatible with EU law, and as a consequence of the General Equal Treatment Act having entered into force in August of 2006, the latter of which transposed into German law the above-referenced Directive, any claim to compensation will be an available remedy only for the month of August 2006 (Saxony), respectively for the period from August of 2006 until the end of March 2011 (Saxony-Anhalt). Following these dates, the new laws governing the remuneration of civil servants that were compatible with EU law were applicable. The Federal Administrative Court has regarded a lump-sum compensation of EUR 100 per month to be reasonable and appropriate within the meaning of section 15 (2) AGG. Since the General Equal Treatment Act entered into force only in Mid-August of 2006, the amount of compensation for this month is to be halved.

By way of applying these principles, the Federal Administrative Court has awarded to the civil servants filing the action – depending on the time at which they asserted the claim and on the time at which the new laws governing the remuneration of civil servants that were compatible with EU law entered into force – a claim to payment in a specified amount (in the case in dispute involving the longest period, this was EUR 5,550; in one of the cases originating in Saxony, this was a mere EUR 50) or has dismissed the action.

By contrast, the Federal Administrative Court did not find for any claim to compensation in the disputes with the members of the armed forces, whose remuneration likewise had been governed by sections 27 and 28 BBesG in its old version. The reason was that they had asserted their claims because of remuneration that was in violation of EU law vis-à-vis the Bundeswehr only after the preclusive time limit relevant to their case had lapsed. As a consequence, the question of whether or not the Directive is at all applicable to the remuneration paid to members of the armed forces was not decisive.

[BVerwG 2 C 3.13](#) - Judgment of 30 October 2014

[BVerwG 2 C 6.13](#) - Judgment of 30 October 2014

[BVerwG 2 C 32.13](#) - Judgment of 30 October 2014

[BVerwG 2 C 36.13](#) - Judgment of 30 October 2014

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