Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

9 September 2015*

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment in employment and occupation — Articles 2, 3(1)(c) and 6(1) — Direct discrimination on grounds of age — Basic salary of judges — Transitional arrangements — Reclassification and subsequent career advancement — Different treatment perpetuated — Justifications)

In Case C-20/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Berlin (Germany), made by decision of 12 December 2012, received at the Court on 15 January 2013, in the proceedings

Daniel Unland

v

Land Berlin,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, J.-C. Bonichot, A Arabadjiev (Rapporteur) J.L. da Cruz Vilaça and C. Lycourgos, Judges

Advocate General: Y. Bot,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 15 April 2015,

after considering the observations submitted on behalf of:

— Mr Unland, by M. Quaas, Rechtsanwalt,

— the German Government, by T. Henze and J. Möller, acting as Agents,

— the Austrian Government, by G. Hesse, acting as Agent,

— the European Commission, by T. Maxian Rusche, D. Martin and M. Kellerbauer, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: German.

Judgment

1 This request for a preliminary ruling and the supplementary request concern the interpretation of Articles 2, 3(1)(c) and 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

2 The request has been made in proceedings between Mr Unland and the *Land* Berlin concerning the detailed rules governing the reclassification and career progression of judges in that region under the new remuneration system applicable to such judges.

Legal context

EU law

3 Article 1 of Directive 2000/78 states that the purpose of the directive is 'to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment'.

4 Article 2 of Directive 2000/78 provides as follows:

'1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

…'

5 Under paragraph 1(c) of Article 3 of Directive 2000/78, entitled 'Scope', that directive applies to all persons, as regards both the public and private sectors, including public bodies, in relation to, inter alia, 'employment and working conditions, including dismissals and pay'.

6 Article 6(1) of Directive 2000/78 is worded as follows:

'Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;

(b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;

…’

7 Article 16(a) of Directive 2000/78 requires Member States to take the necessary measures to ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished.

German law

The old Federal Law on remuneration of civil servants

8 The Federal Law on remuneration of civil servants (Bundesbesoldungsgesetz), in the version in force on 31 August 2006, (‘the old Federal Law on remuneration of civil servants’) remained applicable to federal civil servants and judges until 30 June 2011, and to *Land* Berlin civil servants and judges until 31 July 2011 in the transitional version for Berlin (Bundesbesoldungsgesetz in der Überleitungsfassung für Berlin) (‘the BBesG Bln, old version’).

9 Paragraph 38 of the old Federal Law on remuneration of civil servants, entitled ‘Calculation of basic pay’, provided as follows:

‘(1) In so far as the pay scales do not provide for fixed salaries, basic pay shall be calculated according to age step. Entitlement to the rate of basic pay established for the age step shall arise from the first day of the month in which the relevant age is reached.

(2) Where the judge or prosecutor is appointed after reaching the age of 35, basic pay shall be calculated on the basis of the age arrived at by adding to the number 35 one half of the number of full years of age attained by the judge or prosecutor between reaching the age of 35 and his age at the time of appointment. … .

(3) Judges and prosecutors who have not yet reached the age of 27 shall receive the initial basic pay of their pay grade until they reach the age required in order to progress through the age steps.

(4) Without prejudice to the second and third sentences of subparagraph 2, the relevant age shall be deferred by one half of the period after attainment of the age of 35 in which there was no entitlement to remuneration. …’

The new Law on remuneration of *Land* Berlin civil servants

10 Under the Law reforming the remuneration of *Land* Berlin civil servants (Gesetz zur Besoldungsneuregelung für das Land Berlin — Berliner Besoldungsneuregelungsgesetz) of 29 June 2011, the rules governing *Land* Berlin judges who were already in post on 1 August 2011 (‘existing judges’) differ from those applicable to judges who entered into service with *Land* Berlin after that date (‘new judges’).

– Regional rules applicable to the remuneration of new judges

11 Article 1, paragraph 1, of the Law reforming the remuneration of *Land* Berlin civil servants amended the BBesG Bln, old version. The remuneration of new judges is therefore governed by the new version of that law (‘BBesG Bln, new version’). The relevant provisions are worded as follows:

‘Paragraph 38: Calculation of basic pay

(1) In so far as the pay scale does not provide for fixed salaries, the basic pay of judges and prosecutors shall be calculated in steps. Progression to the next higher step shall be according to periods of experience.

(2) On initial appointment to a post conferring entitlement to remuneration within the scope of this Law, basic pay shall in principle be set at step 1 in so far as no periods under Paragraph 38a(1) are recognised. The step shall be determined by written administrative act with effect from the first day of the month in which the appointment takes effect.

(3) Basic pay shall rise according to periods of experience of three years at step 1, of two years in each case at steps 2 to 4, and of three years in each case at steps 5 to 7. Periods in which there is no entitlement to remuneration shall have the effect of deferring progression by corresponding periods, in so far as no provision is made otherwise in Paragraph 38a(2).

…'

– The rules relating to the remuneration of existing judges

12 Under Article II, paragraph 1, of the Law reforming the remuneration of *Land* Berlin civil servants, the Law establishing transitional arrangements for the remuneration of *Land* Berlin civil servants (Berliner Besoldungsüberleitungsgesetz) ('the BerlBesÜG') of 29 June 2011 sets out the detailed rules for reclassifying existing judges under the new system as well as the transitional measures applicable to those judges.

13 Under Paragraph 2 of the BerlBesÜG, entitled 'Allocation of steps or transitional steps in grades on pay scale A':

'(1) On 1 August 2011, civil servants shall, on the basis of the relevant post held on 31 July 2011 and the basic pay that would accrue to them, on 1 August 2011, under the Law on the Adjustment of Remuneration and Pensions of Civil Servants (Berlin) 2010/2011 of 8 July 2010 (GVBl. p. 362, 2011 p. 158), be placed, in accordance with the following subparagraphs, on the basic pay steps or transitional steps under Annex 3 to the [Law reforming the remuneration of *Land* Berlin civil servants] (GVBl. p. 306). The first sentence shall apply mutatis mutandis to persons on unpaid leave; the placement of such persons shall be determined on the basis of the post and basic pay that would be applicable if that leave had ended on 31 July 2011.

(2) In accordance with subparagraph 1, placement shall be on the step or transitional step that corresponds to basic pay rounded to the next full euro. Where placement cannot be made in accordance with the first sentence, placement shall be on the basic pay step or transitional step … of the corresponding pay grade with the next higher amount. …'

14 Paragraph 5 of the BerlBesÜG, entitled 'Placement on the basic pay steps and transitional steps in pay Grades R1 and R2', provides as follow:

'Persons in receipt of remuneration in pay grades R 1 or R 2 shall, on the basis of the relevant post held as at 31 July 2011 and the basic pay that would accrue to them, on 1 August 2011, under the Law on the Adjustment of Remuneration and Pensions of Civil Servants (Berlin) 2010/2011, be placed on the basic pay steps or transitional steps under Annex 4 to the [Law reforming the remuneration of *Land* Berlin civil servants].The second sentence of Paragraph 2(1) and subparagraphs (2) to (4) shall apply *mutatis mutandis*.'

15 Paragraph 6 of the BerlBesÜG', which concerns subsequent progression, is worded as follows:

'(1) In the case of placement on a basic pay step under Annex 4 to the [Law reforming the remuneration of *Land* Berlin civil servants] on the basis of basic pay from age step 3 of pay grades R1 and R2 onwards, to which entitlement would arise, on 1 August 2011, under the Law on the Adjustment of Remuneration and Pensions of Civil Servants (Berlin) 2010/2011, the person concerned shall be placed on the next higher step; in the case of placement on a transitional basic pay step under Annex 4, the corresponding step shall be reached when the next higher age step would have been reached in accordance with Paragraph 38(1) of the [BBesG Bln, old version]. That rise shall be taken to signify the beginning of the relevant period of experience for the purposes of the second sentence of Paragraph 38(1) of the [BBesG Bln, new version].

(2) By way of derogation from subparagraph 1, the relevant period of experience for the purposes of the second sentence of Paragraph 38(1) of the [BBesG Bln, new version], shall commence — where placement is made on the basis of the basic pay, according to age steps 1 and 2 of pay grade R1, that would apply, on 1 August 2011, under the Law on the Adjustment of Remuneration and Pensions of Civil Servants (Berlin) 2010/2011 — upon placement on basic pay step 1 of Annex 4 to the [Law reforming the remuneration of *Land* Berlin civil servants].

(3) By way of derogation from subparagraphs 1 and 2, in the case of placement on the transitional step for step 5 or placement on the steps or transitional steps subsequent to the transitional step for step 4, periods of experience shall be reduced from step 4 onwards by one year in each case.

(4) By way of derogation from subparagraph 1, in the case of placement on step 1 of Annex 4 to the [Law reforming the remuneration of Land Berlin civil servants] in cases governed by subparagraph 2, and in the case of placement on step 2 of Annex 4 to [that law] on the basis of the basic pay for age step 4 of pay grade R1 to which entitlement would arise, on 1 August 2011, under the Law on the Adjustment of Remuneration and Pensions of Civil Servants (Berlin) 2010/2011, the period of experience at step 4 shall be extended by one year.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

16 Mr Unland, who was born on 19 February 1976, is a judge in the service of the *Land* Berlin. He was appointed under the old Federal Law on the remuneration of civil servants at the age of 29 and, on 1 August 2011, his post was reclassified under the new pay scales in accordance with the BerlBesÜG.

17 By letter of 17 December 2009, the applicant applied to the *Land* Berlin to be remunerated retrospectively, for such time as was not yet statute-barred, at the highest step in his pay grade. This was refused by the Zentrale Besoldungs-und Vergütungsstelle der Justiz (Central pay and emoluments office for the judiciary) by decision of 12 January 2010. Subsequently, the President of the Kammergericht (Higher Regional Court, Berlin) also dismissed the applicant's objection thereto by decision of 7 May 2010.

18 The applicant then brought an action on 5 June 2010 before the Verwaltungsgericht Berlin (Administrative Court) (Germany), by which he claims that he has been discriminated against on the grounds of age as a result of the rule under which remuneration is geared to age. The applicant considers, inter alia, that not only the old Federal law on the remuneration of civil servants but also the rules on reclassification under the new remuneration system are contrary to EU law and, as a consequence, claims he is entitled to remuneration at the highest step in his pay grade. He claims such remuneration for the future and also, retrospectively, in the form of arrears dating back to at least 2009.

19 In that regard, the referring court is uncertain whether the national rules at issue in the main proceedings are compatible with EU law, in particular Directive 2000/78, in so far as those rules may give rise to discrimination on grounds of age, which is prohibited by that directive.

20 In those circumstances, the Verwaltungsgericht Berlin decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is European primary and/or secondary law, here in particular Directive 2000/78, to be interpreted as a comprehensive prohibition of unjustified age discrimination, such that it also covers national rules on the remuneration of Land judges?

(2) If Question 1 is answered in the affirmative: does that interpretation of European primary and/or secondary law mean that a national provision under which the level of basic pay of a judge upon first appointment as a judge, and subsequent increases in that basic pay, are dependent on his age constitutes direct or indirect age discrimination?

(3) If Question 2 is also answered in the affirmative: does that interpretation of European primary and/or secondary law preclude the justification of such a national provision by the legislative aim of rewarding professional experience and/or interpersonal skills?

(4) If Question 3 is also answered in the affirmative: does that interpretation of European primary and/or secondary law, where a non-discriminatory right to remuneration has not been implemented, permit a legal consequence other than retrospective remuneration of those discriminated against at the highest pay step in their pay grade?

Does the legal consequence of infringement of the prohibition of discrimination in that case follow from European primary and/or secondary law itself, here in particular Directive 2000/78, or does the claim of the person discriminated against follow only from application of the principle, recognised under EU law, that Member States are liable for failure correctly to implement the provisions of EU law?

(5) Does the interpretation of European primary and/or secondary law preclude a national measure which makes the claim to (retrospective) payment or compensation dependent on the judges' having enforced that claim in a relatively short period of time?

(6) If Questions 1 to 3 are answered in the affirmative: does it follow from that interpretation of European primary and/or secondary law that a transitional law — under which existing judges are placed on a step under the new system solely according to the amount of the basic pay they received under the old (discriminatory) remuneration system on the date of transition to the new system, and under which further progression to higher steps is subsequently calculated essentially according to the periods of experience acquired since the entry into force of the transitional law, irrespective of the judge's total period of experience — constitutes a perpetuation of the existing age discrimination, continuing until the highest pay step is reached in each case?

(7) If Question 6 is also answered in the affirmative: does that interpretation of European primary and/or secondary law preclude justification of this continuation of the original difference in treatment by the legislative aim whereby the transitional law is to protect not (only) the acquired rights of existing judges existing on the transition date but (also) the expectation of the lifetime income in the respective pay grade that was forecast to be paid under the old system of remuneration, and new judges are to be paid better than existing judges?

Can the continuing discrimination against existing judges be justified by the fact that the alternative (individual placement also of existing judges according to length of experience) would, in administrative terms, be more difficult to implement?

(8) If such justification is rejected in Question 7: does that interpretation of European primary and/or secondary law permit, until a non-discriminatory right to remuneration has been implemented also for existing judges, a legal consequence other than retrospective and continuing remuneration of existing judges at the highest pay step in their pay grade?

(9) If Questions 1 to 3 are answered in the affirmative and Question 6 is answered in the negative: does it follow from that interpretation of European primary and/or secondary law that a law providing for the reclassification of judges under a new system of remuneration which secures faster pay progression from a certain pay step onwards for existing judges who had reached a certain age at the time of transition to the new system than for existing judges who were younger on the transition date constitutes direct or indirect age discrimination?

(10) If Question 9 is answered in the affirmative: does that interpretation of European primary and/or secondary law preclude this difference in treatment being justified by the legislative aim of protecting not the acquired rights existing on the date of transition to the new system but only the expectation of existing judges of their lifetime income in the respective pay grade that was forecast to be paid under the old system of remuneration?

(11) If such justification is rejected in Question 10: does that interpretation of European primary and/or secondary law permit, until a non-discriminatory right to remuneration has been implemented also for existing judges, a legal consequence other than that of securing — retrospectively and on a continuing basis — the same pay progression for all existing judges as that enjoyed by the favoured judges referred to in Question 9?'

21 By letter of 25 June 2014, the Court Registry provided the referring court with a copy of the judgment in *Specht and Others* (C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005) and invited it to indicate whether, in the light of that judgment, it wished to continue with its reference for a preliminary ruling.

22 By decision of 19 December 2014, received at the Court on 29 December 2014, the referring court confirmed that it wished to continue with its reference for a preliminary ruling and reformulated Question 3 as follows:

'If Question 2 is answered in the affirmative: does that interpretation of European primary and/or secondary law preclude the justification of such a national provision?'

23 In those circumstances, the Court is required to rule on all the questions originally submitted, including the third question as reformulated.

Consideration of the questions referred

Question 1

24 By its first question, the referring court seeks to ascertain, in essence, whether Directive 2000/78 must be interpreted as meaning that the conditions governing the remuneration of judges fall within the scope of that directive.

25 That question concerns the material and personal scope of Directive 2000/78.

26 With regard to the material scope of Directive 2000/78, the referring court is uncertain as to the relationship between, on the one hand, Article 3(1)(c) of the directive, under which, within the limits of the areas of competence conferred on the European Union, the directive applies to all persons, as

regards both the public and private sectors, including public bodies, in relation to employment and working conditions, that expression covering, inter alia, dismissals and pay, and, on the other, Article 153(5) TFEU, which lays down an exception to the competences enjoyed by the European Union in social policy matters in that it does not have the right to intervene in matters relating to pay.

27 As the Court stated in *Specht and Others* (C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005, paragraphs 34 and 35), it is necessary to draw a distinction between the term 'pay' as used in Article 153(5) TFEU and the same term as used in the phrase 'conditions, including … pay' in Article 3(1)(c) of Directive 2000/78, the latter term forming part of employment conditions and not relating directly to the setting of the level of pay. Accordingly, the national rules governing the methods of allocating the amount of pay for each grade and step cannot be severed from the material scope of Directive 2000/78.

28 As regards the personal scope of Directive 2000/78, it suffices to note that Article 3(1)(c) of that directive expressly states that it applies, inter alia, to all persons in the public sector, including public bodies. Moreover, it is not disputed that the position of judge falls within the public sector.

29 In those circumstances, the answer to Question 1 is that Article 3(1)(c) of Directive 2000/78 must be interpreted as meaning that pay conditions for judges fall within the scope of that directive.

Questions 2 and 3

30 By its second and third questions, which should be examined together, the referring court has asked, in essence, whether Articles 2 and 6(1) of Directive 2000/78 must be interpreted as precluding a provision of national law under which, within each service grade, the step determining the basic pay of a judge is to be allocated, at the time of appointment, on the basis of the judge's age

31 While Paragraph 38(1) of the old Federal Law on the remuneration of civil servants provided that basic pay is calculated according to age steps, it is apparent from the second subparagraph of that provision that if the judge or prosecutor is appointed after reaching the age of 35, basic pay is calculated according to a 'reference age', which, for the years up to the age of 35, corresponds to the person's actual age, to which is added, for the years above 35, half the number of full years attained between the date on which the judge or prosecutor reached the age of 35 and the date of his appointment. Furthermore, under the third subparagraph of that provision, judges and prosecutors who have not yet reached the age of 27 receive the initial basic pay for their grade until they reach the age required in order to progress through the age steps.

32 The basic pay of judges was therefore fixed upon their appointment solely according to the age group to which they belonged.

33 It its judgment in *Specht and Others* (C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005), the Court was required to consider questions which are, for all essential purposes, the same as Questions 2 and 3 in the present case and, as a consequence, the reply given by the Court in that judgment may be fully transposed to the questions referred by the national court in the main proceedings.

34 At paragraphs 39 to 51 of that judgment, the Court considered whether the old Federal Law on the remuneration of civil servants engendered discrimination within the meaning of Articles 2 and 6(1) of Directive 2000/78 and concluded that it did, on the ground that the allocation of a basic pay step to civil servants upon recruitment according to their age went beyond what was necessary to attain the legitimate aim pursued by that law.

35 The fact that the aim of the provisions at issue in the main proceedings is to reward the professional experience and social skills of judges is irrelevant in that regard.

36 In those circumstances, the answer to Questions 2 and 3 is that 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.

Questions 6 and 7

37 By its sixth and seventh questions, which it is appropriate to examine together, the referring court has asked, in essence, whether 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, 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. The referring court seeks to ascertain in particular whether the different treatment resulting from that legislation may be justified by the aim of protecting acquired rights.

38 It is apparent from Paragraph 5 of the BerlBesÜG that only the previous level of basic pay is taken into account for the purpose of allocating a step or transitional step to existing judges under the new system. Existing judges are allocated to a particular pay step under the new system solely on the basis of the age band in which they fell under the old system.

39 It is clear that that provision may perpetuate the different treatment of judges according to age under the new remuneration system.

40 The reclassification measures introduced by a provision such as Paragraph 5 of BerlBesÜG, under which reclassification is based on the pay previously received by civil servants who are already established, which was itself based on age, perpetuate a discriminatory situation whereby some judges receive lower pay than other judges, even though they are in comparable situations, solely on account of their age at the time of appointment (see, to that effect, judgment in *Specht and Others*, C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005, paragraphs 56 to 58).

41 It is therefore necessary to consider whether that difference in treatment on grounds of age may be justified under Article 6(1) of Directive 2000/78.

42 As regards, first, the aim of protecting acquired rights alluded to by the referring court, protection of the acquired rights of a category of persons constitutes an overriding reason in the public interest (judgment in *Specht and Others*, C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005, paragraph 64 and the case-law cited).

43 Second, the Court has already held that a law such as the BerlBesÜG appears suited to achieving the aim pursued, that is to say, to ensure the preservation of acquired rights (judgment in *Specht and Others*, C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005, paragraphs 65 to 68). It went on to state that the national legislature did not go beyond what was necessary to achieve the aim pursued by adopting the transitional derogation measures put in place by the BerlBesÜG (judgment in *Specht and Others*, C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005, paragraphs 69 to 85).

44 None of the evidence put before the Court is capable of affecting those findings.

45 As is apparent from the evidence submitted to the Court, the reclassification of judges is no different from that of *Land* Berlin civil servants in so far as concerns the method chosen and the objective pursued. Indeed, the BerlBesÜG established uniform rules applicable to judges, prosecutors and civil servants for the purposes of reclassification.

46 Thus, by adopting the BerlBesÜG, the national legislature reformed the system for the remuneration of *Land* Berlin civil servants and judges. That law provided, in order to ensure that the acquired rights of existing judges are maintained, a transitional derogation in their regard, whereby a step or transitional step was immediately allocated to such judges (see, to that effect, judgment in *Specht and Others*, C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005, paragraphs 72 and 73).

47 Furthermore, as Paragraph 38 of the old Federal Law on the remuneration of civil servants applied to all *Land* Berlin judges at the time of their appointment, any discriminatory aspects arising from those provisions potentially affect all such judges (see, to that effect, judgment in *Specht and Others*, C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005, paragraph 96). Accordingly, it must be concluded that there is no valid point of reference under the old Federal Law on the remuneration of civil servants and, contrary to the argument put forward by the applicant in the main proceedings, there is neither a category of 'young judges' who are at a disadvantage as a result of that law and the BerlBesÜG, or a category of 'older judges' who are placed in a more favourable position as a result of those laws.

48 Moreover, the detailed rules governing such reclassification must be regarded as compatible with the requirement imposed on Member States by Article 16(a) of Directive 2000/78 to take the necessary measures to ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished.

49 Accordingly, the answer to Questions 6 and 7 is that 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.

Questions 9 and 10

50 By its ninth and tenth questions, which it is appropriate to examine together, the referring court has asked, in essence, whether 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, laying down detailed rules for the career progression of existing judges 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. The referring court seeks to ascertain in particular whether the different treatment engendered by that law may be justified.

51 It should be noted that, by Paragraph 6 of the BerlBesÜG, the German legislature provided for different treatment according to the age band in which the person in question fell on the date set for the transition to the new system, both as regards the date set for the next advancement in step and as regards the calculation of subsequent relevant periods of experience.

52 As regards the first advancement in step within the new remuneration system, it is apparent from the findings of the national court that, under Paragraph 6(1) and (2) of the BerlBesÜG, the number of years' experience of judges who, under the old system, were in age step 1 or 2 on the date set for transition to the new system, that is judges who, at that date, were under 31, is reduced to zero at the time of reclassification. On the other hand, as regards judges reclassified at least on the basis of the rate of basic pay corresponding to age step 3, that is those aged 31 or over, the next advancement in step occurs on the date on which they would have reached the next higher age step under the old system.

53 As regards subsequent advancement within the new remuneration system, Paragraph 6(3) and (4) of the BerlBesÜG reduces, from step 5 onwards, the number of years' experience required for advancement to the next step, on condition that existing judges were initially allocated to at least transitional step 4 under the new remuneration system.

54 Since, as is apparent from the findings of the referring court, only judges aged at least 39 on the date of transition to the new system may benefit from that reduction in the number of years' experience required for advancement to the next step, whereas judges who had not reached that age at the point of reclassification are excluded from the scope of that provision and must, *a fortiori*, wait a further year before reaching the next relevant step, the provision of national law at issue provides for a difference in treatment based directly on grounds of age for the purposes of Article 2(2)(a) of Directive 2000/78.

55 It is therefore necessary to consider whether that difference in treatment may be justified under Article 6(1) of Directive 2000/78.

56 It is apparent from the observations submitted by the German Government that Paragraph 6 of the BerlBesÜG was intended to bring the structure of pay increases for judges in line with that for civil servants, the latter having previously been modernised in 1997, and, ultimately, 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. It was also necessary to ensure that no existing judge should suffer a drop in salary, either in the immediate short term or in his career as a whole, and that all judges had, by the age of 49, reached the final pay step.

57 It should be noted that, under EU law as it currently stands, the Member States and, where appropriate, the social partners at national level enjoy broad discretion in their choice, not only to pursue a particular aim in the field of social and employment policy, but also in the definition of measures capable of achieving it (see, inter alia, judgment in *Palacios de la Villa*, C-411/05, EU:C:2007:604, paragraph 68).

58 Aims such as those pursued by the domestic legislation at issue in the main proceeding must, in principle, be regarded as capable of justifying 'objectively and reasonably' and 'within the context of national law' a difference in treatment on grounds of age, as provided for by the first subparagraph of Article 6(1) of Directive 2000/78.

59 It is nevertheless necessary to ascertain whether, according to the actual wording of the provision, the means used to achieve those aims are 'appropriate and necessary'.

60 In its observations and the information provided by it at the hearing, the German Government gave a very full explanation of the reasons which led to the adoption of Paragraph 6 of the BerlBesÜG.

61 The German Government stated, inter alia, that the total period spanned by the pay scales for judges and prosecutors is shorter than that for civil servants, as it takes account of the training period, which is generally longer, and the later entry to the profession. The new career advancement system contains fewer steps, namely 8 'experience steps', with the result that a judge will reach the steps with the highest levels of remuneration more quickly. Given, however, that for budgetary reasons it was not

possible to increase judges' income significantly, the pace of such increments is slower during the intermediate years. Thus, from step 5 onwards, a judge must now wait one more year before being placed in the next step.

62 According to the German Government, that change, which benefits judges aged between 31 and 39, should be regarded as a form of bonus to reflect the fact that professional experience increases significantly during the early career stages but also as a means of addressing the needs of judges during a period of their life in which, according to that government, their expenditure needs are greater. Moreover, the career advancement of existing judges who are reclassified at a relatively old age, that is, from age step 7 under the old system, is slower under the new progression structure. To compensate for this, the respective number of years in each step has been reduced by one year for that category. In response to a request for clarification made by the Court at the hearing, the German Government stated that 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 reclassification under the new remuneration system.

63 It should be noted that an examination of the documents before the Court has disclosed nothing to call into question the observations of the German Government. Similarly, no evidence challenging the claim that the new system of career advancement is appropriate and necessary has been put before the Court.

64 Furthermore, the argument that Paragraph 6 of the BerlBesÜG 'exacerbates' the situation of 'young judges', who were already placed at a disadvantage under the old Federal law on the remuneration of civil servants, must be rejected because, as found at paragraph 47 above, such categories do not exist.

65 In the light of the above considerations, in view 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 definition of measures capable of achieving it, it does not appear unreasonable, having regard to the objective which the national legislature sought to attain, for it to have adopted Paragraph 6 of the BerlBesÜG.

66 In the light of the foregoing, the answer to Questions 9 and 10 is that 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 existing judges 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.

Question 4

67 By its fourth question, the referring court asks the Court about the legal implications in the event that the old Federal Law on the remuneration of civil servants is in breach of the principle of non-discrimination on grounds of age. The referring court seeks to ascertain whether those implications flow from Directive 2000/78 or from the case-law devolving from *Francovich and Others* (C-6/90 and C-9/90, EU:C:1991:428) and whether, in the latter case, the conditions for liability to be incurred by the Federal Republic of Germany are met.

68 The Court has already ruled on that question in the judgment in *Specht and Others* (C–501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005) and the answer it gave may be fully transposed to the present case.

69 In those circumstances, on the same grounds as those given in paragraphs 88 to 107 of the judgment in *Specht and Others* (C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005), the answer to Question 4 is as follows:

— 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 the Federal Republic of Germany to have incurred liability under EU law.

Question 5

70 By its fifth question, the referring court asks, in essence, whether EU law is to be interpreted as 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.

71 The Court has already ruled on that question in the judgment in *Specht and Others* (C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005) and the answer it gave may be fully transposed to the present case.

72 In those circumstances, on the same grounds as those given in paragraphs 111 to 114 of the judgment in *Specht and Others* (C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005), the answer to Question 5 is that 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.

Questions 8 and 11

73 Having regard to the answers given to the sixth, seventh, ninth and tenth questions, there is no need to reply to the eighth and eleventh questions.

Costs

74 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Article 3(1)(c) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that pay conditions for judges fall within the scope of that directive.**

2. **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.**

3. **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.**

4. **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.**

5. **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 the Federal Republic of Germany to have incurred liability under EU law.

6. **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.**

[Signatures]