Reports of Cases

OPINION OF ADVOCATE GENERAL
BOT
delivered on 28 November 2013[1]

Joined Cases C-501/12 to C-506/12, C-540/12 and C-541/12

Thomas Specht (C-501/12), Jens Schombera (C-502/12), Alexander Wieland (C-503/12), Uwe Schönefeld (C-504/12),
Antje Wilke (C-505/12),Gerd Schini (C-506/12)v
Land Berlin
and
Rena Schmeel (C-540/12),
Ralf Schuster (C-541/12)v
Federal Republic of Germany

(Requests for a preliminary ruling from the Verwaltungsgericht Berlin (Germany))

(Social policy — Discrimination linked to the age of workers — Legislation of a Member State under which the basic pay of civil servants is to depend on the age of the civil servant)

1. The legal framework for the present references for a preliminary ruling is provided by Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.[2]

2. More specifically, the questions asked by the Verwaltungsgericht Berlin (Administrative Court, Berlin) (Germany) will require the Court to consider, in turn, the validity of Article 3(1)(c) of Directive 2000/78 and the application of that provision to pay conditions for civil servants, and the compatibility of the national provisions in question with the principle of non-discrimination on grounds of age, laid down in Article 2 of that directive. The Court will then have to determine the legal consequences of a possible breach of that principle. Lastly, the Court will have to examine whether a national rule, such as that at issue in the main proceedings, under which the civil servant is required to take steps, 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, is consistent with the right to an effective remedy.

I – Legal framework

A – *EU law*

3. Under Article 1 of Directive 2000/78, the purpose of the directive is to lay down a general framework for combating discrimination on 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.

1 — Original language: French.
2 — OJ 2000 L 303, p. 16.

4. Article 2 of that directive provides:

'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;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

   (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary ...

   ...'

5. Article 3(1)(c) of that directive provides that, within the limits of the areas of competence conferred on the European Union, the directive is to apply to all persons, as regards both the public and private sectors, including public bodies, in relation to employment and working conditions, including pay.

6. Article 6 of Directive 2004/78 reads as follows:

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

B – *German law*

1. Legislation applicable to remuneration of civil servants in Land Berlin

(a) The Federal Law on remuneration of civil servants in force until June 2011

8. Until 30 June 2011, Paragraph 27 et seq. of the Federal Law on remuneration of civil servants (Bundesbesoldungsgesetz, 'the old version of the BBesG'), in the version in force on 31 August 2006, was the legal basis for the system of remuneration of civil servants in Land Berlin.

9. In the old version of the BBesG, seniority for the purposes of remuneration, determined on the basis of age, was the criterion on the basis of which the initial allocation of a pay step was made and the starting point for further progression on the pay scale under the remuneration system.

10. Accordingly, Paragraph 27 of the old version of the BBesG provides that, in so far as the pay scales do not provide otherwise, basic pay is to be calculated in steps. Advancement in step is to depend on the civil servant's seniority for remuneration purposes and on performance. The civil servant or the member of the armed forces is to receive at least the initial basic pay for the grade allocated. Under that same provision, basic pay is to rise at intervals of two years up to the fifth pay step; then at intervals of three years up to the ninth step; and at intervals of four years thereafter. That provision also specifies that, in the event of consistently exceptional performance, civil servants and military personnel on pay scale A may receive in advance the basic pay corresponding to the next step (performance step). The number of performance steps awarded by an employer in a calendar year may not exceed 15% of the number of civil servants and military personnel on pay scale A who have not yet reached the basic pay maximum. If it is established that the performance of the civil servant or member of the armed forces does not meet the average requirements attached to the position, that person is to remain on his existing step until his performance justifies progression to the next.

11. Under Paragraph 28 of the old version of the BBesG, seniority is to be calculated from the first day of the month in which the civil servant or member of the armed forces reached the age of 21.

12. The starting point for calculating seniority is to be deferred by a period determined by the length of time during which, after reaching the age of 31, the person concerned had no claim to remuneration as a civil servant or as a member of the armed forces, that is to say, by one quarter of that length of time until the age of 35 and by one half thereafter. Periods of less than one month are to be rounded up to the next unit. Remuneration is to be treated as remuneration as a civil servant or as a member of the armed forces where it is remuneration from a main occupation in the service of a public-law employer, in the service of public-law religious bodies and their associations or in the service of any other employer which applies the collective agreements in force in relation to the public service or collective agreements with essentially the same content and to which the State or other public authorities contribute significantly through the payment of contributions or allowances or in some other way.

13. By the Second Law amending the status of the civil service ('Zweites Dienstrechtsänderungsgesetz') of 21 June 2011, Land Berlin integrated the relevant provisions of the old version of the BBesG into the law of Land Berlin as the Federal Law on remuneration of civil servants in its transitional version for Berlin (Bundesbesoldungsgesetz in der Überleitungsfassung für Berlin; 'the old version of the BBesG Bln').

(b) The Federal Law on remuneration of civil servants in force on 1 August 2011

14. By the Revised Remuneration Law for Land Berlin (Gesetz zur Besoldungsneuregelung für das Land Berlin — Berliner Besoldungsneuregelungsgesetz, 'the BerlBesNG') of 29 June 2011, Land Berlin amended the old version of the BBesG Bln. Since then, different rules have applied to civil servants of Land Berlin depending on whether they entered service after 1 August 2011 ('new civil servants') or were already in service on 31 July 2011 ('established civil servants'). Paragraph 1(1) of the BerlBesNG amended the old version of the BBesG Bln with effect from 1 August 2011. For new civil servants, it is this amended version of the BBesG Bln ('the new version of the BBesG Bln') that applies.

(i) The rules applicable to new civil servants

15. The deciding factor for the initial allocation of a step (an experience step) to a new civil servant and for subsequent salary progression in pay scale A is no longer age-related seniority but the period of service completed in accordance with experience-related requirements.

16. Thus, Paragraph 27 of the new version of the BBesG Bln provides that, save provision to the contrary under the remuneration schemes, basic pay is to be calculated in steps (experience steps). Progression to the next step is to depend on the experience acquired. Under that paragraph, for every first appointment to a job carrying a claim to service pay within the scope of the new version of the BBesG Bln, basic pay is to be set at step 1, in so far as no periods under Paragraph 28(1) are recognised. Paragraph 27(3) states that basic pay is to rise upon completion of two years of experience in step 1, three years of experience in each case in steps 2, 3 and 4, and then four years of experience in each case in steps 5, 6 and 7. To the extent that no provision is made otherwise in Paragraph 28(2) of the new version of the BBesG Bln, progression is to be deferred by a period equivalent to the length of time during which there was no claim to service pay.

17. Under Paragraph 27(4) of the new version of the BBesG Bln, in the event of consistent and sustainable exceptional performance, the basic pay of civil servants on pay scales A may be set in advance at the next experience step (performance step). The number of performance steps awarded by an employer in a calendar year may not exceed 15% of the number of civil servants and military personnel on pay scales A who have not yet reached the maximum basic pay. If it is established that the performance of the civil servant or member of the armed forces does not meet the average requirements attached to the position, that person is to remain on his existing step until his performance justifies advancement to the next.

18. Paragraph 28(1) of the new version of the BBesG Bln provides that, for the purposes of allocating the initial pay step pursuant to Paragraph 27(2) of the BBesG Bln, account is to be taken of periods in an equivalent main occupation, in the service of a public-law employer or in the service of public-law religious bodies or their associations, which are not a requirement for admission to the career. Account is also to be taken of periods which must be compensated under the Arbeitsplatzschutzgesetz (Job Protection Law) where entry into the civil service has been deferred because of the obligation to perform military or community service.

(ii) The rules applicable to established civil servants

19. Paragraph 2(1) of the BerlBesNG laid down a different rule for established civil servants, the Berlin Remuneration Transition Law (Berliner Besoldungsüberleitungsgesetz, 'the 'BerlBesÜG') of 29 June 2011.

20. Under Paragraph 2(1) of the BerlBesÜG, on 1 August 2011 civil servants were to be allocated, in accordance with the rules laid down in the subsequent subparagraphs, the steps or transitional steps provided for in Annex 3 to the BerlBesNG, on the basis of the post held on 31 July 2011 and the basic pay that would accrue to them on 1 August 2011 pursuant to the Law on the Adjustment of the Remuneration and Pensions of Civil Servants (Land Berlin) 2010/2011 (Gesetz zur Besoldungs- und Versorgungsanpassung für Berlin) of 8 July 2010. In accordance with Paragraph 2(2) of the BerlBesÜG, the civil servant was to be allocated the step or transitional step that corresponds to the basic pay rounded up to the next unit.

21. Paragraph 3(1) of the BerlBesÜG states that the period of experience required for progression under Paragraph 27(3) of the new version of the BBesG Bln is to begin upon the allocation of a step as provided for under Annex 3 to the BerlBesNG.

22. The referring court explains that, as justification for those changes, the legislature stated that, in the light of Directive 2000/78 and given the prohibition of age discrimination, the earlier system of remuneration had become increasingly controversial, especially in the wake of the most recent case-law concerning contractual employees.

23. The legislature stated that, whilst the only judgments to be given in the field of the law on civil servants had been at first instance and they did not make a finding of direct discrimination on grounds of age, the urgency of a switch to a system based on periods of experience arose from the concern that the case-law of the higher courts and the European Court of Justice might make a different assessment in that area, in which case there was a risk of additional annual costs being involved, estimated at EUR 109 million. It was necessary, therefore, for the salary entry point and subsequent salary progression no longer to be established on the basis of age-related seniority, but on service completed in accordance with requirements. The legislature added that the reform takes account of Directive 2000/78. In its view, however, the aim of the new system is neither to reduce nor to increase the income of civil servants. The new pay scale was accordingly designed, first and foremost, to be ‘cost neutral’ and contains a maximum deviation of +/-1% of the notional lifetime income in the respective pay grade that would be attained without promotion on reaching the age of 65. The provision made, by way of exception, for established civil servants was also motivated by the concern to protect the acquired rights of civil servants.

2. The rules applicable to federal civil servants

24. Until 30 June 2009, Paragraph 27 et seq. of the old version of the BBesG, in the version in force on 6 August 2002, formed the legal basis for the system of remuneration of federal civil servants. Those provisions were identical to the rules described above in connection with the old version of the BBesG, in the version in force on 31 August 2006.

25. The Law on the reorganisation and modernisation of federal civil service law (Gesetz zur Neuordnung und Modernisierung des Bundesdienstrechts) of 5 February 2009 modified the system whereby the pay of federal civil servants was calculated according to seniority. Thus, from 1 July 2009, under Paragraph 27 et seq. of the new version of the BBesG, in the version in force on 5 February 2009, that system is to be based on ‘experience steps’ determined on the basis of periods of service completed in accordance with requirements.

II – Facts in the main proceedings

26. The facts in the main proceedings can be summarised as follows. Mr Specht (Case C-501/12), Mr Schombera (Case C-502/12), Mr Wieland (Case C-503/12), Mr Schönefeld (Case C-504/12), Ms Wilke (Case C-505/12) and Mr Schini (Case C-506/12), on the one hand, and Ms Schmeel (Case C-540/12) and Mr Schuster (Case C-541/12), on the other — (collectively, 'the applicants') — were appointed, respectively, as permanent civil servants of Land Berlin and permanent civil servants of the Federal Republic of Germany.

27. The applicants were initially classified under the remuneration system in accordance with the old version of the BBesG, that is to say, according to their seniority on the date of appointment.

28. The applicants dispute the calculation of their pay and claim before the referring court that they have been discriminated against on grounds of age.

29. In Cases C-502/12 and C-506/12, Mr Schombera and Mr Schini claim that they should be paid, with retrospective effect, the difference between the remuneration that they would have received if they had been allocated the highest pay step, and the remuneration actually received, in respect of the entire period from 1 January 2008 to 1 August 2011, the date of the transition to the new system of remuneration based on experience.

30. In Cases C-501/12, C-503/12 and C-505/12, Mr Specht, Mr Wieland and Ms Wilke claim that they should be paid remuneration at the highest step for the period from September 2006 to 31 July 2011 (Case C-501/12) and for the period from 1 January 2008 to 31 July 2011 (Cases C-503/12 and C-505/12). For the period after 31 July 2011, the date of the transition to the new system of remuneration, they claim that they should receive remuneration equivalent to what they would have received if the wage reclassification under the BerlBesÜG had been based on the highest step of their old pay grade.

31. In Case C-504/12, Mr Schönefeld disputes the rules determining his placement within the new system of remuneration and claims that he should be paid, with retrospective effect, the difference between the remuneration actually received and the remuneration that he believes he should have received from 1 August 2011.

32. Lastly, in Cases C-540/12 and C-541/12, Ms Schmeel and Mr Schuster dispute the calculation of their remuneration and claim that they should be paid, with retrospective effect, the difference between the remuneration that they would have received if they had been placed on the highest pay step and the remuneration actually received, in respect of the period between January 2008 and July 2009, the date of the transition to the new system of remuneration.

III – The questions referred for a preliminary ruling

33. The questions referred in Cases C-501/12, C-503/12 and C-505/12 are identical. Those referred in Cases C-502/12 and C-506/12 are identical to the first to fifth questions asked in Cases C-501/12, C-503/12 and C-505/12. The first to sixth questions asked in Case C-504/12 correspond to the first to third and sixth to eighth questions in Cases C-501/12, C-503/12 and C-505/12. Lastly, the questions referred in Cases C-540/12 and C-541/12 are also identical to the first to fifth questions asked in Cases C-501/12, C-503/12 and C-505/12, the only difference being the reference to the remuneration of federal civil servants and not to the remuneration of civil servants of Land Berlin.

34. I shall therefore reproduce the questions raised in Cases C-501/12, C-503/12 and C-505/12, as those cases encompass all the questions referred to the Court in these cases.

35. The Verwaltungsgericht Berlin decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. Is primary and/or secondary EU law — specifically, in this context, Directive [2000/78] — to be interpreted, for the purposes of applying fully the prohibition of unjustified discrimination on grounds of age, to the effect that that directive also covers national rules on the remuneration of … civil servants?

2. If Question 1 is answered in the affirmative: does that interpretation of primary and/or secondary EU law mean that a provision of national law under which the basic pay of a civil servant, upon his entry into the public service, is to be decisively determined by reference to his age, and thereafter to rise primarily on the basis of his length of public service constitutes direct or indirect discrimination on grounds of age?

3. If Question 2 is answered in the affirmative: does that interpretation of primary and/or secondary EU law preclude the possibility of justifying such a provision of national law in terms of the legislative aim of rewarding professional experience?

4. If Question 3 is answered in the affirmative: does that interpretation of primary and/or secondary EU law permit — pending the introduction of a non-discriminatory remuneration system — a legal consequence other than the retrospective grant to those discriminated against of the remuneration corresponding to the highest step in their grade?

   Does the legal consequence of breach of the prohibition of discrimination flow in that case directly from primary and/or secondary EU law itself — specifically, in this context, from Directive [2000/78] — or is the sole basis for a claim on the part of the victim of discrimination the application of the principle of EU law that Member States incur liability if provisions of EU law are incorrectly transposed into national law?

5. Does that interpretation of primary and/or secondary EU law preclude a national measure which makes the right to (retrospective) payment or to compensation conditional upon that right being asserted by the civil servants concerned within relatively narrow time-limits?

6. If Questions 1, 2 and 3 are answered in the affirmative, does it follow from that interpretation of primary and/or secondary EU law that a law laying down the rules governing the reclassification under the new system of [established] civil servants — under which the step in the new system to which they are allocated is to be determined solely on the basis of the amount of basic pay that they received under the old (discriminatory) remuneration system on the date set for transition to the new system, and further advancement to higher steps is thereafter to be based solely on the periods of experience completed after the entry into force of that law, irrespective of the overall length of experience of the civil servant concerned — perpetuates the existing discrimination on grounds of age, until such time as the civil servant has reached the highest pay step?

7. If Question 6 is answered in the affirmative: does that interpretation of primary and/or secondary EU law preclude the possibility that the perpetuation of discrimination can be justified in terms of the legislative aim of protecting not (only) the acquired rights existing on the transition date but (also) the expectations of [established] civil servants regarding the prospects of increased income within the relevant grade, as guaranteed under the old system?

   Can the perpetuation of discrimination against [established] civil servants be justified by the fact that the alternative approach (consisting in the individual reclassification of [established] civil servants on the basis of their seniority) would be relatively expensive to implement in administrative terms?

8. In the event that the Court rejects the reasons suggested as justification in Question 7: does that interpretation of primary and/or secondary EU law permit — pending the introduction of a non-discriminatory remuneration system — a legal consequence other than the retrospective and ongoing grant to [established] civil servants of the remuneration corresponding to the highest step in their grade?

   Does the legal consequence of breach of the prohibition of discrimination flow in that case directly from primary and/or secondary EU law itself — specifically, in this context, from Directive [2000/78] — or is the sole basis for a claim on the part of the victim of discrimination the application of the principle of EU law that Member States incur liability if provisions of EU law are incorrectly transposed into national law?'

IV – Analysis

A – *The validity of Article 3(1)(c) of Directive 2000/78 and its application to pay conditions for civil servants*

36. In my view, Question 1, which concerns the application of Directive 2000/78 to the circumstances of the cases before the referring court, can be divided into two parts. First of all, the referring court asks whether Article 3(1)(c) of Directive 2000/78 is applicable to pay conditions for civil servants. In that regard, it has doubts as to the validity of that provision in the light of the FEU Treaty.

37. Accordingly, it points out that Directive 2000/78 was adopted on the basis of Article 19 TFEU (formerly Article 13 EC), paragraph 1 of which provides that, '[w]ithout prejudice to the other provisions of the Treaties and *within the limits of the powers conferred by them upon the Union*, the Council [of the European Union] ... may take appropriate action to combat discrimination based on … age'.[3] However, in the view of the referring court, the question of the elimination of possible discrimination on grounds of age in the system of remuneration for civil servants also touches on the question of pay per se, an area in which, pursuant to Article 153(5) TFEU, primary law does not, in principle, confer any competence upon the European Union. Since Article 3(1)(c) of Directive 2000/78 expressly provides that the directive applies to pay conditions, its validity could be called into question in the light of the FEU Treaty.

38. Second, the referring court is seeking to ascertain whether, if Article 3(1)(c) of Directive 2000/78 were found to be invalid, the principle of non-discrimination on grounds of age, as a general principle of law, or Article 21 of the Charter of Fundamental Rights of the European Union[4] could be applied autonomously in the cases before it.

39. The German Government and the European Commission argue that Directive 2000/78 is valid and that it is applicable in the present cases. I concur with that view for the following reasons.

40. Admittedly, recourse to Article 19 TFEU as the basis for rules of EU law is limited to areas falling within the scope *ratione materiae* of EU law. Accordingly, when adopting legislation to combat discrimination on one of the grounds mentioned in that provision, the EU legislature must satisfy itself that the area in question is in fact one of the areas in which the European Union has competence to act in accordance with the principle of conferral of powers under Article 5(1) and (2) TEU; otherwise there would be a risk of extending the scope of the Treaties.

3 — My italics.

4 — 'The Charter'.

41. Article 153 TFEU, which comes under Title X on social policy and which authorises the EU legislature to enact legislation relating to working conditions, expressly excludes pay from its scope.

42. Is the Court nevertheless required to refrain from exercising any review whatsoever where the national legislation in question is connected with pay? Is Article 3(1)(c) of Directive 2004/78 invalid by reason of the exception laid down in Article 153(5) TFEU? I do not think so.

43. There is a difference — which admittedly might seem artificial at first sight but is nevertheless essential — between the term 'pay' as used in that provision and the expression 'conditions, including … pay' in Article 3(1)(c) of Directive 2000/78.

44. In its judgment of 13 September 2007 in *Del Cerro Alonso*, [5] after pointing out that the principle of non-discrimination cannot be interpreted restrictively, the Court stated that, as paragraph 5 of Article 153 TFEU derogates from paragraphs 1 to 4 of Article 153, the matters reserved by paragraph 5 must be narrowly construed so as not to affect unduly the scope of paragraphs 1 to 4, nor to call into question the aims pursued by Article 151 TFEU. [6] The Court also held that, more specifically, the exception relating to 'pay' set out in Article 153(5) TFEU is explained by the fact that fixing the level of wages falls within the contractual freedom of the social partners at national level and within the relevant competence of Member States. In those circumstances, it was considered appropriate, as EU law currently stood, to exclude determination of the level of wages from harmonisation under Article 151 TFEU et seq. [7]

45. Accordingly, it is clear that the term 'pay' as used in Article 153(5) TFEU does not encompass pay conditions, which form part of employment conditions. They do not relate directly to the fixing of the level of pay, but to the conditions in which an employee is awarded a certain level of pay, determined in advance by the parties concerned, whether by agreement between parties in the private sector or between the social partners and the State.

46. In my view, the system of remuneration for German civil servants at issue in the main proceedings serves as a good illustration of this difference between pay and pay conditions. The level of wages of German civil servants is determined by grades then by steps. The amounts corresponding to each grade and each step are freely determined by the competent bodies, and the EU legislature certainly could not, on the basis of Article 153(5) TFEU, intervene in determining those amounts, by imposing a minimum threshold for example. In this latter case, competence is vested exclusively in the Member States. [8] Wage disparities within the European Union cannot, as the law stands at present, be subject to EU rules.

47. On the other hand, the effect of national rules governing the arrangements for allocation to those grades and steps cannot be to discriminate against civil servants by reason, inter alia, of their age.

48. As the Council of the European Union stated in its written observations, pay constitutes an essential element of employment conditions, [9] perhaps even the most important and the most open to discrimination. [10] Consequently, if pay conditions were to be included in the exception under Article 153(5) TFEU, that would render Article 19 TFEU — which, it should be borne in mind, seeks to combat discrimination — largely meaningless.

5 — Case C-307/05 [2007] ECR I-7109.

6 — Paragraphs 37 to 39.

7 — Paragraph 40.

8 — See, to that effect, *Del Cerro Alonso*, paragraph 46.

9 — See paragraph 21 of those observations. Moreover, the Court highlighted the importance of remuneration in paragraph 33 of the judgment in Case C-425/02 *Delahaye* [2004] ECR I-10823.

10 — See page 10 of the Proposal for a Council Directive establishing a general framework for equal treatment in employment and occupation (COM(1999) 565 final).

49. Article 3(1)(c) of Directive 2000/78 is therefore valid. As far as the application of that provision to remuneration for civil servants is concerned, it is sufficient to note that, under that provision, the directive applies to all persons, as regards both the public and private sectors, including public bodies, in relation to employment and working conditions, including dismissals and pay. [11]

50. Accordingly, I believe that Article 3(1)(c) of Directive 2000/78 must be interpreted as applying to pay conditions for civil servants.

51. In the light of the foregoing, it is not necessary, in my view, to answer the second part of Question 1.

B – *Discrimination on grounds of age*

52. Before addressing Questions 2 and 3, I think it helpful to return to the system of remuneration at issue in the main proceedings and, by explaining it with the help of practical examples, gain a better understanding of the way it operates.

53. Under the old version of the BBesG, the initial allocation to a civil servant of a pay step within a grade is determined by seniority which runs from the first day on which the civil servant reached the age of 21. Until the age of 31, the civil servant is therefore allocated, on appointment, the step that he would have been allocated if he had been appointed at the age of 21. In certain circumstances, that seniority is deferred by periods after the age of 31, namely by one quarter of a relevant period until the age of 35 and by one half thereafter.

54. The following examples give practical illustrations of the way in which seniority is calculated. [12]

55. A person who was born on 1 April 1977 and appointed as a civil servant on 1 October 1994 reached the age of 21 on 31 March 1998. The starting point for the calculation of his seniority is therefore 1 March 1998.

56. A person who was born on 1 April 1967 and appointed as a civil servant on 16 October 2000 reached the age of 21 on 31 March 1988. Since he was 33 years of age at the time of his appointment, the starting point for his seniority will not be 1 March 1988. The period between 31 March 1998 (the date on which he reached the age of 31) and 16 October 2000 (the date of appointment) is two years, six months and 16 days. In accordance with Paragraph 28(2) of the old version of the BBesG, the starting point for the purposes of calculating his seniority is to be deferred by one quarter of that period, that is to say, by seven months and 19 days, rounded to seven months. The starting point for seniority is therefore 1 March 1988 plus seven months, that is to say, 1 October 1988.

57. A person who was born on 10 September 1964 and appointed as a civil servant on 1 May 2001 reached the age of 21 on 9 September 1985. The starting point for seniority should have been fixed at 1 September 1985. However, on the date of appointment, that person was 36 years old. The same provision is therefore applicable. Consequently, account is taken of one quarter of the four-year period between 9 September 1995 (the date on which he reached the age of 31) and 9 September 1999 (the date on which he reached the age of 35), that is to say, one year. Then, account is taken of half of

11 — See, with regard to the application of that directive to civil servants, Case C-88/08 *Hütter* [2009] ECR I-5325; Case C-229/08 *Wolf* [2010] ECR I-1; Joined Cases C-159/10 and C-160/10 *Fuchs and Köhler* [2011] ECR I-6919; and Joined Cases C-124/11, C-125/11 and C-143/11 *Dittrich and Others* [2012] ECR.

12 — These examples are taken from the following websites: http://www.dz-portal.de/ and http://www.pc-gehalt.de/Seiten/Besoldungsdienstalter.htm.

the period (one year, seven months and 21 days) between 9 September 1999 (the date on which he reached the age of 35) and 30 April 2001 (the date of appointment), that is to say, nine months. The starting point for calculating seniority is accordingly deferred by one year and 9 months and is set at 1 June 1987.

58. Accordingly, by Questions 2 and 3, the referring court essentially asks whether Articles 2 and 6(1) of Directive 2000/78 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which the level of basic pay of a civil servant upon his entry into service is dependent on his age and thereafter rises according to length of service.

59. Furthermore, by Questions 6 and 7, the referring court asks whether those same provisions must be interpreted as precluding a transitional system like that at issue in the main proceedings, which, for the allocation to existing civil servants of steps in the new remuneration system, has regard only to the previous basic pay and which, for progression to higher steps, has regard only to periods of experience attained from the entry into force of the transitional system, irrespective of the overall length of experience of the civil servant concerned.

1. The system of remuneration established by the old version of the BBesG

60. Article 2(2)(a) of Directive 2000/78 states that direct discrimination is to 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 of that directive, age being one of those grounds.

61. In the light of the operation of the system of remuneration established by the old version of the BBesG, as described above, there is no doubt, in my view, that it introduces discrimination on grounds of age for the purposes of that provision.

62. As has been mentioned, this system provides for the initial allocation to a pay step within a grade to be made on the basis of a single criterion, namely age. Accordingly, two civil servants who belong to a different age group but have equivalent professional experience and who are appointed to the same grade will be awarded different pay because they will be allocated different pay steps simply as a reflection of their age group. Those two civil servants, who are in a comparable situation, will be treated differently as one of them will receive less by way of basic pay than the other, simply and solely because he is younger.

63. The system of remuneration established by the old version of the BBesG therefore introduces a difference in treatment based on the criterion of age, for the purposes of Article 2(2)(a) of Directive 2000/78. What is more, that system of remuneration is similar to the system at issue in *Hennigs and Mai*,[13] which the Court held to be discriminatory.[14]

64. However, the first subparagraph of Article 6(1) of Directive 2000/78 provides that such differences of treatment on grounds of age are not to 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 or vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

13 — Joined Cases C-297/10 and C-298/10 [2011] ECR I-7965.

14 — Paragraphs 54 to 59.

65. In that connection, the German Government argues that, even if the Court were to find discrimination on grounds of age, it would be justified by the fact that the system of remuneration under the old version of the BBesG, which was based on the principle of pay according to seniority, pursued the fundamentally legitimate aim of globally taking into account, at the time when new civil servants were appointed, qualifications and professional experience attained within the civil service and elsewhere. Furthermore, that system was seen as a guarantee of uniform practice in all instances of appointment. It was considered to overcome the disadvantages of the previous allocation practice, which was fair on a case-by-case basis but complicated and therefore applied in a non-uniform manner. Lastly, according to the German Government, the aim of that system was to make the civil service more attractive to applicants seeking a second career.

66. I do not think that those aims are legitimate for the purposes of the first subparagraph of Article 6(1) of Directive 2000/78.

67. It is clear from that provision that the aims that may be considered legitimate and, consequently, appropriate for the purposes of justifying a derogation from the principle prohibiting discrimination on grounds of age are social policy objectives, such as those related to employment policy, the labour market or vocational training. [15]

68. As far as taking professional experience into account is concerned, the Court has ruled that that aim must in principle be regarded as 'objectively and reasonably' justifying 'within the context of national law' a difference of treatment on grounds of age, for the purposes of the first subparagraph of Article 6(1) of Directive 2000/78. [16] Rewarding experience that enables a worker to perform his duties better is, as a general rule, a legitimate aim of wages policy. [17]

69. In the present case, I do not think that the means employed to achieve that aim are appropriate and necessary. It is true that recourse to the criterion of length of service is, as a general rule, appropriate for achieving that objective in so far as length of service goes hand in hand with professional experience. [18]

70. However, as the system of remuneration of German civil servants under the old version of the BBesG was based solely on the age of the civil servant, it does not allow proper account to be taken of experience attained. A civil servant who is 30 years old on the date of his appointment to a certain grade, without any professional experience, will be placed directly on step 5. He will therefore receive basic pay equivalent to that received by a civil servant who was engaged at the age of 21 and who, unlike him, benefits from nine years of seniority and professional experience in that same grade. By the same token, a civil servant who is 30 years old on the date of appointment will, until he reaches the final step, benefit from the same progression to higher pay steps as a civil servant who is 21 on the date of appointment, even if the latter has more professional experience in the grade.

71. It is true that Paragraph 27 of the old version of the BBesG provides for performance-based progression for civil servants in the event of consistently exceptional performance. However, under that provision, the number of performance steps awarded by an employer in a calendar year may not exceed 15% of the number of civil servants and military personnel on pay scale A who have not yet reached the maximum basic pay. Not only does that measure not enable all civil servants demonstrating high performance to progress, but it also fails to rectify the lack of professional experience by allocating civil servants to a lower step reflecting their actual level of experience in the grade.

15 — See Case C-286/12 *Commission* v *Hungary* [2012] ECR, paragraph 60 and the case-law cited.

16 — *Hennigs and Mai*, paragraph 72.

17 — Idem.

18 — Ibid., paragraph 74.

72. Accordingly, I think that the system of remuneration established by the old version of the BBesG goes beyond what is necessary and appropriate for achieving the legitimate aim purportedly sought by the German Government, namely the taking into account of professional experience.

73. As the Court held in *Hennigs and Mai*, the use of a criterion also based on length of service or professional experience but without resorting to age would, from the point of view of Directive 2000/78, appear better suited to achieving that aim. [19]

74. As regards the argument put forward by the German Government concerning the aim of administrative simplification, I do not think that it can justify discrimination on grounds of age. As stated above, the aims that may be considered 'legitimate' for the purposes of Article 6(1) of Directive 2000/78 are social policy objectives. The German Government cannot therefore simply rely on the complexity of a practice which, as it acknowledges, was nevertheless fairer, to justify discrimination on grounds of age.

75. Lastly, as justification for the discrimination introduced by the old version of the BBesG, the German Government invokes the aim of making the civil service more attractive to applicants seeking a second career. Whilst it is true that the Court has ruled that encouragement of recruitment undoubtedly constitutes a legitimate aim of Member States' social or employment policy, [20] I none the less take the view that in the present cases the old version of the BBesG goes beyond what is necessary and appropriate for achieving that aim in so far as simply taking account of seniority or professional experience attained, without considering age, would have been sufficient to encourage those who already have a private-sector career to apply for the German civil service.

76. In the light of the foregoing considerations, I take the view that Articles 2 and 6(1) of Directive 2000/78 should be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which the level of the basic pay of a civil servant upon his entry into service depends on his age and thereafter rises essentially according to the duration of his civil servant status.

2. The transitional system

77. By Questions 6 and 7, the referring court also asks whether the transitional system applicable to existing civil servants is contrary to the principle of non-discrimination on grounds of age.

78. It should be borne in mind that, under Paragraph 2 of the BerlBesÜG, only the previous basic pay is to be taken into account for the purposes of the allocation of a pay step to existing civil servants. Furthermore, under Paragraph 3 of the BerlBesÜG, only experience attained since the entry into force of that law is to be taken into account for the purposes of progression to higher steps.

79. In *Hennigs and Mai*, the Court ruled that, by taking as the basis for determining the reference amount — namely the reclassification pay for transfer to the new collective pay system — the pay previously received, the transitional system perpetuated the situation in which some employees receive lower pay than other employees, even though they are in comparable situations, on the sole ground of their age on appointment. [21]

19 — Ibid., paragraph 77.

20 — See *Fuchs and Köhler*, paragraph 49 and the case-law cited, and Joined Cases C-335/11 and C-337/11 *HK Danmark* [2013] ECR, paragraph 82 and the case-law cited.

21 — Paragraph 84 of that judgment.

80. The same holds true in the present cases in so far as, as the referring court points out, the previous basic pay was established on the basis of a discriminatory criterion, that of age, and the discrimination that existed under the old version of the BBesG persists when the transitional system is applied to existing civil servants.

81. Contrary to the assertions made by the German Government, the reclassification arrangements do not gradually eliminate the discrimination on grounds of age that existed under the remuneration system established by the old version of the BBesG.

82. Even though, under Paragraph 3 of the BerlBesÜG, only experience attained from the entry into force of that law is to be taken into account for the purposes of progression to higher steps, the fact remains that, fundamentally, the initial point of reference for the allocation of steps under the new remuneration system is the — discriminatory — previous basic pay. Thus, with equal experience, progression to higher steps will always be discriminatory for a younger civil servant.

83. Taking the example of two civil servants with equal experience, civil servant A being 20 years old on the date of his recruitment and civil servant B being 30, the latter will be allocated, at the time of the transfer to the transitional system, a higher step than the step allocated to civil servant A, since only the previous basic pay, based on age, is taken into account. Furthermore, progression through the steps of the new system will always be more advantageous for civil servant B than for civil servant A, in so far as civil servant B will be allocated those steps sooner and will therefore receive more favourable treatment.

84. At the hearing, the German Government stated that discrimination is not perpetuated by the transitional system in so far as existing civil servants who suffered discrimination under the old system will be allocated the highest step more quickly than if they had continued to progress under the old system. Nevertheless, the fact remains that, with equal experience, an older civil servant will benefit from the highest step for a longer period and, accordingly, from more favourable basic pay than a younger civil servant. Far from disappearing with time, the discrimination will continue.

85. It must now be ascertained whether that discrimination can be justified by a legitimate aim of the kind invoked by the German Government, which consists in protecting established advantages on the reference date for the transfer to the new system.

86. In that respect, in the context of a restriction of freedom of establishment, the Court has held that protection of the established rights of a category of persons constitutes an overriding reason in the public interest which justifies that restriction, provided that the restrictive measure does not go beyond what is necessary for that protection.[22]

87. According to the German Government, the loss of remuneration for existing civil servants if the new system of remuneration were applied without applying the transitional system would be equivalent to one pay step, which corresponds to a sum between EUR 80 and EUR 150.

88. However, unlike the situation in *Hennigs and Mai*, in which the Court ruled that the transitional measure did not go beyond what was necessary for the protection of established rights,[23] we have seen that the discriminatory effects will not tend to disappear as the pay of civil servants progresses.

22 — See *Hennigs and Mai*, paragraph 90 and the case-law cited.

23 — Ibid., paragraphs 96 to 98.

89. The discriminatory transitional system therefore persists without any time limitation. Consequently, whilst that transitional system may actually be considered to be appropriate for the purposes of preventing loss of revenue for existing civil servants, it nevertheless appears to go beyond what is necessary for achieving the aim of protecting established advantages. The German legislature could have introduced a transitional system that eliminates the effects of the discrimination in time by gradually moving closer to the new system of remuneration based on professional experience without recourse to age.

90. As the referring court states, it would have been possible to apply a transitional system which guarantees an unduly favoured existing civil servant the previous level of pay where he has not attained the experience required under the new pay system for access to higher pay. The discrimination would thus be removed in time without any sharp reduction in the pay of existing civil servants, who benefit from an advantage as compared with younger civil servants.

91. The referring court also wishes to know whether considerations relating to the increased administrative expenditure entailed by an approach along the lines described above — that is to say, individual reclassification of existing civil servants according to periods of professional experience — could justify discrimination on grounds of age. I do not think so. As I have already stated, the aims that may be considered 'legitimate' for the purposes of Article 6(1) of Directive 2000/78 are social policy objectives. Practical considerations for the administration cannot, in themselves, be an aim pursued by social policy which could justify a breach of a fundamental principle like the principle of non-discrimination on grounds of age, especially since the entry into force of the new system of remuneration for civil servants clearly illustrates that it was feasible for the administration to classify civil servants individually according to their professional experience.

92. Accordingly, I take the view that Articles 2 and 6(1) of Directive 2000/78 must be interpreted as precluding a transitional system, such as that at issue in the main proceedings, under which, as regards the allocation of steps under the new pay system to existing civil servants, account is taken solely of the previous basic pay and, as regards progression to higher steps, regard is had only to periods of professional experience attained since the entry into force of the transitional system, irrespective of the total length of experience of the civil servant concerned.

C – *The legal consequences of a finding of a breach of the principle of non-discrimination on grounds of age*

93. By Questions 4 and 8, the referring court is seeking to ascertain the legal consequences of a finding that rules like those laid down in the old version of the BBesG and in the BerlBesÜG entail a breach of the principle of non-discrimination on grounds of age.

94. The referring court states that, even taking into account national law in its entirety, it is unable to arrive at an interpretation consistent with EU law.

95. Furthermore, it considers that it is also unable to apply the Court's settled case-law to the effect that it is the responsibility of the national court, hearing a dispute involving the principle of non-discrimination on grounds of age, to provide, in a case within its jurisdiction, the legal protection that individuals derive from the rules of EU law and to ensure that those rules are fully effective, setting aside any provision of national law which may conflict with that law.[24]

24 — See Case C-144/04 *Mangold* [2005] ECR I-9981, paragraph 77, and Case C-341/08 *Petersen* [2010] ECR I-47, paragraph 81.

96. The referring court explains that the consequence of excluding the relevant provisions laid down in the old version of the BBesG, the old version of the BBesG Bln or the BerlBesÜG would be to take away the legal basis for the remuneration of civil servants and thus to deprive the civil servant of remuneration.

97. In so far as that approach would create a legal vacuum that cannot be filled by German national law, the referring court asks, in particular, whether the approach outlined in *Terhoeve*[25] and *Landtová*[26] is applicable in the present cases. In those judgments, after finding a breach of the principle of non-discrimination, the Court stated that, where discrimination contrary to EU law has been established, and for as long as measures restoring equal treatment have not yet been adopted, observance of the principle of equality can be ensured only by granting to persons within the disadvantaged category the same advantages as those enjoyed by persons within the favoured category, the latter arrangements, for want of the correct application of EU law, being the only valid point of reference remaining.[27]

98. In the present case, according to the referring court, this would translate into a retroactive upward equalisation of pay, the only way to remedy a breach of the principle of non-discrimination on grounds of age being to pay, retrospectively, civil servants who suffer discrimination the remuneration corresponding to the highest step.

99. The central point here is how effectively to combat discrimination on grounds of age that is contrary to EU law. Is holding the Member State liable for an infringement of EU law the only conceivable solution, as the Commission suggests, even though it requires fresh proceedings to be brought before the national court and therefore represents an additional constraint for persons who suffer discrimination?

100. Whilst the Commission is correct in its view that the retroactive allocation to persons who suffer discrimination the highest step in their grade would give rise to other discrimination and is not therefore the appropriate solution, I nevertheless think that it is possible to apply the rule laid down in *Landtová* in the main proceedings.

101. As has been stated above, according to the Court's case-law, in order to restore equal treatment while national measures have not yet been adopted to that effect, persons within the disadvantaged category must be granted the same advantages as those enjoyed by persons within the favoured category. To that end, it is therefore necessary to identify precisely the two categories concerned.

102. It is true that the difficulty encountered in the present cases stems from the fact that it is not as easy to identify those two categories as in the cases that the Court has been called to address until now. The categories concerned are not, for example, men on the one hand and women on the other.[28]

103. In the cases before the referring court, there are no homogenous categories of persons who suffer discrimination, on the one hand, and favoured persons, on the other. The discrimination introduced by the pay system based on the old version of the BBesG has effects at several levels. As we have seen, on the basis of equivalent professional experience, the discrimination affects the youngest persons.[29] There are therefore many categories to be compared, since there may be as many categories as there are persons of different ages with equivalent professional experience.

25 — Case C-18/95 [1999] ECR I-345.

26 — Case C-399/09 [2011] ECR I-5573.

27 — *Terhoeve*, paragraph 57 and the case-law cited, and *Landtová*, paragraph 51.

28 — See, inter alia Case C-401/11 *Soukupová* [2013] ECR.

29 — See point 62 of this Opinion.

104. All the same, I cannot see any reason not to apply in the main proceedings the long-established line of authority reflected in *Terhoeve* and *Landtová*,[30] mentioned above. That case-law seeks to ensure immediately that the rights under EU law of a citizen of the European Union who suffers discrimination are respected. Where legislation is contrary to EU law and so long as national measures restoring equal treatment have not yet been adopted, it is for the national court to protect those rights.

105. In the present case, the applicants derive from Directive 2000/78 the right not to suffer discrimination by reason of their age. The immediate restoration of equal treatment is particularly important since the consequence of the discrimination relates to pay conditions and thus to a portion of the pay of civil servants. The effect of applying the rule in *Francovich and Others*[31] could be to require the applicants to bring fresh proceedings before the national courts, with all the attendant consequences, including in terms of finances and time.

106. The fact that the categories concerned are not perfectly homogeneous in the present cases would not appear to be an insurmountable obstacle. I think that, in order to restore equal treatment, civil servants who suffer discrimination should not be guaranteed allocation to the highest step of the grade, but to the same step as that to which an older civil servant with equivalent professional experience was allocated. Moreover, the German Government mentions such an approach in its written observations, when it explains that, in so far as EU law requires rectification, this should take greater account of individual situations. It adds that individually appropriate compensation would entail determining which candidates in a specific recruitment situation, were — because they were older — appointed on more advantageous conditions than others, despite a similar profile.[32]

107. That approach, which would seem to be the most equitable, has the benefit of allowing the national court to have regard to an existing system of reference, namely the old system of remuneration, and of thereby quickly eliminating the discrimination suffered by the civil servant. It is true that in some cases the national court may encounter a case where there is no profile equivalent to that of the civil servant who was disadvantaged by reason of his age. In such a case, it would be for the national court to decide, in all fairness, on the approach that, in its view, is the most likely to lead to the career of such a civil servant being taken into account in the most equitable manner possible. For example, it could have regard to the new system of remuneration which permits classification according to professional experience.

108. Accordingly, in the light of the foregoing, I take the view that, in so far as discrimination contrary to EU law has been established, and for as long as measures restoring equal treatment have not yet been adopted, the only way of ensuring observance of the principle of equality is by allocating to civil servants who suffer discrimination the same step as that allocated to an older civil servant with equivalent professional experience.

D – *The right to an effective remedy*

109. By Question 5, the referring court essentially asks the Court whether provisions of national law, such as those at issue in the main proceedings, under which the exercise of the applicants' right to equal treatment is conditional upon that right having been asserted vis-à-vis the employer within relatively narrow time-limits, that is to say, by the end of the financial year then in course, infringes the right to an effective remedy. The German Government explains that the financial year is established and decided on an annual basis by the Law on finance.

30 — See, inter alia, Case 71/85 *Federatie Nederlandse Vakbeweging* [1986] ECR 3855; Case 286/85 *McDermott and Cotter* [1987] ECR 1453; Case C-102/88 *Ruzius-Wilbrink* [1989] ECR 4311; Case C-33/89 *Kowalska* [1990] ECR I-2591; and Case C-184/89 *Nimz* [1991] ECR I-297.

31 — Joined Cases C-6/90 and C-9/90 [1991] ECR I-5357.

32 — See paragraph 78 of the written observations of the German Government.

110. In the first place, it should be borne in mind that, under the first paragraph of Article 47 of the Charter, '[e]veryone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article'.

111. In the second place, as the Court ruled in its judgment of 8 July 2010 in *Bulicke*,[33] Article 9 of Directive 2000/78 states that (i) Member States are to ensure that judicial and/or administrative procedures for the enforcement of obligations under the directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them and (ii) those obligations of the Member States are without prejudice to national rules relating to time-limits for bringing actions as regards that principle. It follows from that wording that the question of time-limits for initiating a procedure for the enforcement of obligations under the directive is not governed by EU law.[34]

112. The Court has consistently held that, in the absence of EU rules governing the matter, it is for the domestic legal system of each Member State, in accordance with the principle of the procedural autonomy of the Member States, to designate the courts and tribunals with jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights that individuals derive from EU law, the Member States having none the less responsibility for ensuring that those rights are effectively protected in each case.[35] However, in accordance with the principle of cooperation in good faith, now enshrined in Article 4(3) TEU, the detailed procedural rules governing actions for safeguarding those rights must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not make it impossible or excessively difficult in practice to exercise rights conferred by EU law (principle of effectiveness).[36]

113. As regards, first of all, the principle of equivalence, it is settled law that observance of that principle requires that the national rule at issue be applied without distinction, whether the action is based on rights that individuals derive from EU law or whether it is based on an infringement of national law, where the purpose and cause of action are similar. It is for the national court, which has direct knowledge of the detailed procedural rules applicable, to ascertain whether the actions concerned are similar as regards their purpose, cause of action and essential characteristics.[37]

114. In the present case, it is clear from the information provided by the referring court that, in accordance with a principle of German case-law, a civil servant must take steps within relatively narrow time-limits to assert a claim to financial payments that do not arise directly from the law, that is to say, in any event, before the end of the financial year then in course. The referring court goes on to explain that, in some cases, as a consequence of the specific characteristics of the status of civil servant and the reciprocal obligation of trust that this entails, the possibility for civil servants to assert such claims is restricted.

115. The requirement that steps be taken within relatively narrow time-limits, that is to say, before the end of the financial year, seems to apply, therefore, both to actions brought by civil servants who suffer as a result of an infringement of national law and to those brought by civil servants who suffer as a result of an infringement of EU law. Consequently, it would seem that this national rule is consistent with the principle of equivalence.[38] Whatever the case, however, that must be established by the national court.

33 — Case C-246/09 [2010] ECR I-7003.

34 — Paragraph 24.

35 — See Case C-93/12 *Agrokonsulting-04* [2013] ECR, paragraph 35 and the case-law cited.

36 — Ibid., paragraph 36 and the case-law cited.

37 — Ibid., paragraph 39 and the case-law cited.

38 — See, to that effect, Case C-429/09 *Fuß* [2010] ECR I-12167, paragraph 73.

116. As regards the principle of effectiveness, it should be noted that the Court has ruled, in the context of a request for a preliminary ruling concerning Directive 2000/78, that the fixing of the period for submitting a claim to an employer at two months would not appear liable to make it impossible or excessively difficult in practice to exercise rights conferred by EU law.[39]

117. *A fortiori*, therefore, the obligation for the civil servant to take steps 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 does not appear liable in principle to make it impossible or excessively difficult in practice to exercise rights conferred by EU law, in so far as the financial year corresponds to the calendar year.[40]

118. However, the question of the effectiveness of such a remedy arises where the civil servant becomes aware of the infringement of his right not to suffer discrimination at the end of the financial year. For example, if that civil servant did not become aware of the discrimination he suffers until a few days before the end of the financial year, he would be virtually deprived of his right of action.

119. It would therefore appear that a civil servant in such circumstances may be deprived of an effective judicial remedy for defending rights conferred by EU law.

120. It will be for the referring court, which — by contrast with the Court in the context of Article 267 TFEU — has jurisdiction to appraise the facts of the cases before it and to construe German law, to ascertain whether or not the national rule at issue in those disputes, under which the civil servant must take steps, 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, is in breach of the principle of effectiveness.

121. In the light of the foregoing, I take the view that EU law — and, in particular, the principles of equivalence and effectiveness and Article 47 of the Charter — does not preclude a national rule, such as that at issue in the main proceedings, under which the civil servant must take steps, 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, provided that the conditions governing actions for safeguarding rights that individuals derive from EU law are not less favourable than those governing actions to defend financial claims based on domestic law, and provided that such a national rule does not cause individuals such procedural problems, linked to the time-limits for the barring of actions, as to make it excessively difficult to exercise the rights derived from EU law, a matter that it is for the referring court to determine.

V – Conclusion

122. In the light of the foregoing considerations, I propose that the Court answer the questions asked by the Verwaltungsgericht Berlin as follows:

(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 applying to pay conditions for civil servants.

(2) Articles 2 and 6(1) of Directive 2000/78 should be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which the level of the basic pay of a civil servant upon his entry into service depends on his age and thereafter rises essentially according to the duration of his civil servant status.

39 — See *Bulicke*, paragraphs 38 and 39. See also the order of 18 January 2011 in Case C-272/10 *Berkizi-Nikolakaki*, paragraph 51.

40 — Paragraph 4 of the Financial Regulation (Bundeshaushaltsordnung) provides that the financial year is to be the calendar year and that the Ministry of Finance may lay down different rules for specific subject-areas.

(3) Articles 2 and 6(1) of Directive 2000/78 must be interpreted as precluding a transitional system, such as that at issue in the main proceedings, under which, as regards the allocation of steps under the new pay system to existing civil servants, account is taken solely of the previous basic pay and, as regards progression to higher steps, regard is had only to periods of professional experience attained since the entry into force of the transitional system, irrespective of the total length of experience of the civil servant concerned.

(4) In so far as discrimination contrary to EU law has been established, and for as long as measures restoring equal treatment have not yet been adopted, the only way of ensuring observance of the principle of equality is by allocating to civil servants who suffer discrimination the same step as that allocated to an older civil servant with equivalent professional experience.

(5) EU law — and, in particular, the principles of equivalence and effectiveness and Article 47 of the Charter of Fundamental Rights of the European Union — does not preclude a national rule, such as that at issue in the main proceedings, under which the civil servant must take steps, 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, provided that the conditions governing actions for safeguarding rights that individuals derive from EU law are not less favourable than those governing actions to defend financial claims based on domestic law, and provided that such a national rule does not cause individuals such procedural problems, linked to the time-limits for the barring of actions, as to make it excessively difficult to exercise the rights derived from EU law, a matter that is for the referring court to determine.