

Form of order sought

- declare that, by failing to bring into force the laws, regulations and administrative provisions necessary to ensure compliance with Commission Directive 2011/18/EU of 1 March 2011 amending Annexes II, V and VI to Directive 2008/57/EC of the European Parliament and of the Council on the interoperability of the rail system within the Community, ⁽¹⁾ and in any event by failing to inform the Commission of those provisions, the Republic of Poland has failed to fulfil its obligations under Article 2 of that directive;
- order the Republic of Poland to pay the costs of the proceedings.

Pleas in law and main arguments

The period within which Directive 2011/18/EU had to be transposed expired on 31 December 2011.

⁽¹⁾ OJ 2011 L 57, p. 21.

Reference for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 8 November 2012 — Thomas Specht v Land Berlin

(Case C-501/12)

(2013/C 26/53)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: Thomas Specht

Defendant: Land Berlin

Questions referred

1. Is European primary and/or secondary law, here in particular Directive 2000/78/EC, ⁽¹⁾ to be interpreted as a comprehensive prohibition of unjustified age discrimination, such that it also covers national rules on the remuneration of Land civil servants?
2. If Question 1 is answered in the affirmative: does the interpretation of this European primary and/or secondary law mean that a national provision under which the level of the basic pay of a civil servant on establishment of the status of civil servant is substantially dependent on his age and also, in particular, rises according to the duration of civil servant status constitutes direct or indirect age discrimination?

3. If Question 2 is also answered in the affirmative: does the interpretation of this European primary and/or secondary law preclude the justification of such a national provision by the legislative aim of making payment for professional experience?
4. If Question 3 is also answered in the affirmative: does the 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/EC, or does the claim follow only from the point of view of failure to implement the rules of European law in accordance with the claim to State liability under European Union 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 civil servants' having enforced that claim in good time?
6. If Questions 1 to 3 are answered in the affirmative: does it follow from the interpretation of European primary and/or secondary law that a transitional law — under which existing civil servants are placed on a step of the new system solely according to the amount of the basic pay they attained under the old (discriminatory) law on remuneration on the transition date, and according to which further progression to higher steps is thereupon calculated solely according to the periods of experience attained since the entry into force of the transitional law, irrespective of the civil servant's absolute 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 the interpretation of European primary and/or secondary law preclude a justification of this unrestricted, continuing unequal treatment by the legislative aim whereby the transitional law is to protect not (only) the acquired rights 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 law on remuneration?

Can the continuing discrimination against existing civil servants be justified by the fact that the regulatory alternative (individual placement also of existing civil servants according to periods of experience) would involve increased administrative expenditure?

8. If such justification is rejected in Question 7: does the interpretation of European primary and/or secondary law, until a non-discriminatory right to remuneration has been implemented also for existing civil servants, permit a legal

consequence other than retrospective and continuing remuneration of existing civil servants 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/EC, or does the claim follow only from the point of view of failure to implement the rules of European law in accordance with the claim to State liability under European Union law?

⁽¹⁾ 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).

Reference for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 8 November 2012 — Jens Schombera v Land Berlin

(Case C-502/12)

(2013/C 26/54)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: Jens Schombera

Defendant: Land Berlin

Questions referred

1. Is European primary and/or secondary law, here in particular Directive 2000/78/EC, ⁽¹⁾ to be interpreted as a comprehensive prohibition of unjustified age discrimination, such that it also covers national rules on the remuneration of Land civil servants?
2. If Question 1 is answered in the affirmative: does the interpretation of this European primary and/or secondary law mean that a national provision under which the level of the basic pay of a civil servant on establishment of the status of civil servant is substantially dependent on his age and also, in particular, rises according to the duration of civil servant status constitutes direct or indirect age discrimination?
3. If Question 2 is also answered in the affirmative: does the interpretation of this European primary and/or secondary law preclude the justification of such a national provision by the legislative aim of making payment for professional experience?

4. If Question 3 is also answered in the affirmative: does the 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/EC, or does the claim follow only from the point of view of failure to implement the rules of European law in accordance with the claim to State liability under European Union 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 civil servants' having enforced that claim in good time?

⁽¹⁾ 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).

Reference for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 8 November 2012 — Alexander Wieland v Land Berlin

(Case C-503/12)

(2013/C 26/55)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: Alexander Wieland

Defendant: Land Berlin

Questions referred

1. Is European primary and/or secondary law, here in particular Directive 2000/78/EC, ⁽¹⁾ to be interpreted as a comprehensive prohibition of unjustified age discrimination, such that it also covers national rules on the remuneration of Land civil servants?
2. If Question 1 is answered in the affirmative: does the interpretation of this European primary and/or secondary law mean that a national provision under which the level of the basic pay of a civil servant on establishment of the status of civil servant is substantially dependent on his age and also, in particular, rises according to the duration of civil servant status constitutes direct or indirect age discrimination?