



## Reports of Cases

### Case C-20/13

**Daniel Unland**  
v  
**Land Berlin**

(Request for a preliminary ruling from the Verwaltungsgericht Berlin)

(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)

Summary — Judgment of the Court (Second Chamber), 9 September 2015

1. *Social policy — Equal treatment in employment and occupation — Directive 2000/78 — Scope — Conditions governing the remuneration of judges — Included*  
*(Art. 153(5) TFEU; Council Directive 2000/78, Art. 3(1)(c))*
2. *Social policy — Equal treatment in employment and occupation — Directive 2000/78 — Prohibition of discrimination on grounds of age — National legislation under which the basic pay of a judge is determined, at the time of appointment, solely on the basis of the judge's age — Not permissible — Breach of principle of proportionality*  
*(Council Directive 2000/78, Arts 2 and 6(1))*
3. *Social policy — Equal treatment in employment and occupation — Directive 2000/78 — Prohibition of discrimination on grounds of age — National legislation laying down detailed rules for the reclassification, under a new remuneration system, of judges already in post before that legislation entered into force — Legislation under which the new pay step is to be determined only on the basis of the amount received by way of basic pay under the old remuneration system founded on discrimination based on the judge's age — Lawfulness — Condition — Legislation for the protection of acquired rights*  
*(Council Directive 2000/78, Arts 2 and 6(1))*
4. *Social policy — Equal treatment in employment and occupation — Directive 2000/78 — Prohibition of discrimination on grounds of age — National legislation laying down detailed rules governing the career progression of judges already in post before the entry into force of that legislation under a new remuneration system — Legislation securing faster pay progression, from a certain pay step onwards, for judges who had reached a certain age at the time of transition to the*

*new system than for judges who were younger on the transition date — Lawfulness — Condition — Aims pursued by legislation which are objectively and reasonably justified within the context of national law*

*(Council Directive 2000/78, Arts 2 and 6(1))*

5. *Social policy — Equal treatment in employment and occupation — Directive 2000/78 — Prohibition of discrimination on grounds of age — Infringement of that prohibition by national legislation governing the remuneration of judges — Consequences — Requirement for 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 — No such requirement — Whether the conditions for liability to be incurred by the Member State concerned are met. — Assessment by the national court*

*(Council Directive 2000/78)*

6. *EU law — Rights conferred on individuals — National rules of procedure — National legislation which requires national judges 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 — Lawfulness — Conditions — Respect for the principles of equivalence and effectiveness*

1. Article 3(1)(c) of Directive 2000/78 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.

While Article 153(5) TFEU 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, inter alia, in matters relating to pay, it is necessary to draw a distinction between the term ‘pay’ as used in that provision 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.

(see paras 26, 27, 29, operative part 1)

2. Articles 2 and 6(1) of Directive 2000/78 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding a provision of national law under which the basic pay of a judge is determined at the time of his appointment solely according to the judge’s age.

It has already been held that such a provision engendered discrimination within the meaning of Articles 2 and 6(1) of Directive 2000/78 insofar as 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.

The fact that the aim of such a national legal provision is to reward the professional experience and social skills of judges is irrelevant in that regard.

(see paras 34-36, operative part 2)

3. Articles 2 and 6(1) of Directive 2000/78 establishing a general framework for equal treatment in employment and occupation must be interpreted as not precluding a provision of national law 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.

(see para. 49, operative part 3)

4. Articles 2 and 6(1) of Directive 2000/78 establishing a general framework for equal treatment in employment and occupation must be interpreted as not precluding a provision of national law 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.

The Member States and 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.

Aims such as those pursued by the legislation at issue, that is, to bring the structure of pay increases for judges in line with that for civil servants, the latter having previously been modernised, 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 and 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, 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.

(see paras 56-58, 66, operative part 4)

5. See the text of the decision.

(see paras 68, 69, operative part 5)

6. See the text of the decision.

(see paras 71, 72, operative part 6)