



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	<b>Germany</b>
<b>Title:</b>	<b>Damages and age discrimination</b>
<b>Date:</b>	<b>20.10.2015</b>
<b>Expert:</b>	Mahlmann, Matthias
<b>Update of flash report nr:</b>	
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Age discrimination
<b>Ground of discrimination:</b>	Age
<b>Source:</b>	Federal Court ( <i>Bundesgerichtshof</i> ), Az.: III ZR 4/15, 23.Juli 2015
<b>Field:</b>	Employment
<b>Applicable law:</b>	Sec. 15.2; 15.4 Equal Treatment Act ( <i>Allgemeines Gleichbehandlungsgesetz</i> )

### **Content**

#### **Case:**

The case concerns a police officer who argued that rules on retirement applicable to him that provide that a police officer has to retire earlier than other civil servants constitute discrimination on the ground of age. The main legal issues are, first, the question whether the age limit for the retirement of police officers can be lower than for other civil servants. Secondly, the court had to determine, whether an increase of age limits for retirement can justifiably be based on demographic developments and its effect on pension systems. The respective law provided for an increase of the retirement age of police officers, remaining, however, lower than the retirement age of other civil servants. It was justified by the increase of the proportion of older persons in society and the need to secure sufficient means of pensions systems by a later retirement age.

#### **Decision of the Court:**

The court held that the particular professional duties of a police officer, including physical fitness, justify a lower age limit in comparison to other civil servants. An increase of the retirement age can be based, in the view of the court, on the development of the populations and the needs it creates for the organisation of the civil service and its pension system, including the necessity of later retirement.

In addition, it argued that the time limits of Sec. 15.4 Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*) do not apply to claims seeking to establish state liability under European Union law, because the latter addresses legislative action, not individual discriminatory action regulated by the Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*). The purpose of the time limit of the Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*) is to draw limits to individual claims. This purpose does not, in the view of the court, justify a time limit on claims seeking to establish state liability which aim to ensure compliance of states with EU law.

**Key points of analysis:**

The decision adds further clarifications concerning the question of justifications for unequal treatment on the ground of age, here concerning professional duties and demographic factors. It holds that the time limit of the Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*) does not preclude claims for damages on the bases of European Union law.

The case confirms existing case law on grounds for justified unequal treatment on the ground of age. It argues convincingly against the application of the (short) time limit of Sec. 15.4 Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*) to claims seeking to establish state liability under European Union law, extending thus the reach of EU law.

**Internet link source:** <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=a6a4ec83fab99a1588d4b31e2278e86&nr=71988&pos=12&anz=19> Last accessed 07/10/2015.