



FLASH REPORT

Date: 15.5.2009
Expert: Mahlmann, Matthias
Title: Age limit for entrance in civil service
Country: Germany

Context

Issue at stake: Teacher is not employed as civil servant because of exceeding age limit of 35 years
Ground of discrimination: of Age
Source: Decision of Federal Administrative Court, 19 February 2009, BVerwG 2 C 54.07
Field: Employment / civil service

Legislative provisions: Art. 33.2 Grundgesetz; Sec. 10 Allgemeines Gleichbehandlungsgesetz; Art. 6.1 Directive 2000/78/EC; Sec. 52.1, 84.1 sentence 1 Verordnung über die Laufbahnen der Beamten im Lande Nordrhein-Westfalen

Content

Case: Born in 1962, the plaintiff, working as a teacher since 1999, applied for conversion of his employment into the status of a civil servant in 2000. The defendant, the Land, rejected his application, arguing that the plaintiff exceeded the statutory age limit of 35 years and no exceptions were to be made on the ground of delay due to childcare and military service because of the long duration of plaintiff's studies (21 semesters).

Decision of the Court: The Federal Administrative Court decided that age limits in civil service career law are not violating German constitutional law as well as European or German anti-discrimination-legislation. Such provisions, the Court argued, constitute a restriction of the constitutional principle of equal access to the public service according to performance (Art. 33.2 *Grundgesetz*) as well as a direct discrimination on the ground of age, but may be justified according to Art. 6.1 sentences 1 and 2 Directive 2000/78/EC and Sec. 10 sentences 1 and 2 General Act on Equal Treatment (*Allgemeines Gleichbehandlungsgesetz*) on the justification of unequal treatment. In this respect, a reasonable relation between the period of

employment and the later pension entitlement as well as a balanced age structure in the civil service are considered legitimate aims, which can render age limits necessary and appropriate. However, the Court held that in the specific case the concrete provisions (Sec. 52.1, 84.1 sentence 1 Verordnung über die Laufbahnen der Beamten im Lande Nordrhein-Westfalen) on the age limit of 35 years for employment as civil servant and on possible exceptions from this requirement were void since the provisions allowed for a wide scope of discretion for the administration to decide whether an exception of the age limit is granted or not. The Court therefore ruled that the plaintiff has the right to demand a new decision about his application, not regarding (the now void provisions) on age limits. The Court underlined that the reasonableness of any new regulation on age limits depends partly on the scope of exceptions allowed for.

Short analysis: In its decision, the Federal Administrative Court pointed out that age limits for entering the civil service are in principle reconcilable with anti-discrimination law but demanded a test of proportionality as well as respect for the requirement of statutory certainty.

Internet link source and additional information: www.bverwg.de