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Age restrictions for notaries - gloss on the Judgment of the Federal Court of Justice (BGH) of August 21, 2023 – NotZ(Brfg) 4/22

Abstrakt

This commentary examines the ruling of the Federal Court of Justice (BGH) of August 21, 2023 (NotZ(Brfg) 4/22), and its implications for the notarial profession in Germany. Under § 47 No. 2 and § 48a of the Federal Notarial Code (BNotO), a notary's office expires at the end of the month in which they reach the age of 70. The judgment addresses the legality of this age limit, particularly in relation to European Union law, and assesses its compliance with the principles set out in Directive 2000/78/EC. The BGH reaffirms the necessity of the age restriction as a means of ensuring generational turnover within the notarial profession, which is essential for maintaining its sustainability and preventing an aging workforce. This commentary explores the BGH's interpretation of employment policy objectives, the balance between the interests of older and younger notaries, and the broader impact on Germany's notarial system. Ultimately, the ruling highlights the importance of upholding the age limit to foster a dynamic, responsive, and representative notarial profession.

Keywords: notary – Directive 2000/78 – age limit – lawyer-notary