Court of Justice of the European Union
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Press and Information

Judgment in Case C-415/10
Galina Meister v Speech Design Carrier Systems GmbH

EU legislation does not entitle a worker who has a plausible claim that he meets the requirements listed in a job advertisement and whose application was rejected to have access to information indicating whether the employer engaged another applicant at the end of the recruitment process.

However, the refusal to grant any access to information may be one of the factors to take into account when establishing facts from which it may be presumed that there has been discrimination.

EU law[1] prohibits discrimination on the grounds of sex, age and ethnic origin *inter alia* in recruitment procedures. Where a person considers himself wronged because the principle of equal treatment has not been applied to him, he must establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination. It is then for the opposing party to prove that there has been no infringement of that principle. Member States must take such measures as are necessary, in accordance with their national judicial systems, to ensure the application of that principle.

Ms Meister, a Russian national, was born in 1961. She holds a Russian degree in "systems" engineering, which has been recognised in German as equivalent to a German degree awarded by a university of applied science.

The company Speech Design published two advertisements successively, with a similar content, to recruit an "experienced software developer". Ms Meister responded to those two advertisements by applying for the post. Her successive applications were rejected, without her being invited to interview and without the company telling her on what grounds her applications were unsuccessful. Being of the view that she fulfilled the requirements of the post, she considered that she suffered less favourable treatment than another person in a comparable situation on the grounds of her sex, age and ethnic origin. She brought an action before the German courts seeking, first, compensation from that company for employment discrimination and, secondly, the production of the file for the person who was engaged, which would enable her to prove that she was more qualified than that person.

The Bundesarbeitsgericht (Federal Labour Court), to which the case was referred, asks the Court of Justice, in essence, whether EU law entitles a worker – who has a plausible claim that he meets the requirements listed in a job advertisement, but whose application was rejected – to have access to information indicating whether the employer engaged another candidate and if so, on the basis of what criteria. Moreover, the Court asks whether the fact that the employer does not disclose the requested information gives rise to a presumption that the discrimination alleged by the worker exists.

[1] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22),
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)
Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23)

The Court recalls, first, that it is the person who considers himself to have been wronged because the principle of equal treatment has not been applied who must initially establish the facts from which it may be presumed that there has been discrimination. It is only where that person has established those facts that the defendant must then prove that there has been no breach of the principle of non-discrimination[2]. As the Court has already held, the assessment of the facts from which it may be presumed that there has been discrimination is a matter for national judicial bodies, in accordance with national law or practice.

The Court then confirms its case-law[3] according to which EU law does not specifically entitle persons who consider themselves to be the victim of discrimination to information in order that they may establish facts from which it may be presumed that there has been discrimination. It is not, however, inconceivable that a refusal of disclosure by the defendant, in the context of establishing such facts, is liable to compromise the achievements of the objective pursued by that directive and, in particular to deprive that provision of its effectiveness.

The Court considers that that case-law applies to the present case since, despite legislative developments, the EU legislator did not intend to amend the rules on the burden of proof. Therefore, it is for the German court to ensure that the refusal of disclosure by Speech Design is not liable to compromise the achievement of the objectives pursued by EU law. It must in particular take account of all the circumstances of the dispute in order to determine whether there is sufficient evidence for a finding that the facts from which it may be presumed that there has been such discrimination have been established. In that regard, the Court recalls that national law or the national practices of the Member States may provide that discrimination may be established by any means, including on the basis of statistical evidence.

Among the facts which may be taken into account is, in particular, the fact that Speech Design seems to have refused Ms Meister any access to the information which she seeks to have disclosed. Moreover, account can also be taken of the fact that the employer does not dispute that Ms Meister's level of expertise matches that referred to in the job advertisement and that, notwithstanding this, Speech Design did not invite her to a job interview after the publication of the two vacancy notices.

The Court concludes that EU n law must be interpreted as **not entitling a worker who as a plausible claim that he meets the requirements listed in a job advertisement and whose application was rejected to have access to information indicating whether the employer engaged another candidate at the end of the recruitment process.**

However, it cannot be ruled out that **a refusal to grant any access to information may be one of the factors to take into account in the context of establishing facts from which it may be presumed that there has been direct or indirect discrimination**. It is for the referring court to determine whether that is the case in the proceedings in question, taking into account all the circumstances of the case before it.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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[2] Case C-104/10 *Kelly*. In that judgment the Court interprets Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex (OJ 1998 L 14, p. 6) the provisions of which are almost identical to those of the directives for which an interpretation is sought in the present case.
[3] *Kelly*.