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NEWSLETTER N°9

Recent Civil Service Case Law - Staff Regulations

Discrimination based on language
— Interests of the service - Notice of
competition - Selection procedures for
staff - Regulation No. 1/58 - Art. 21, 22
FR Charter

Discrimination based on
language in staff selection
procedures:
in principle, not allowed

Case C-377/16, Spain / Parliament, of 26
March 2019
Case C-621/16 P, Commission / Italy, of 26
March 2019



Staff Matters

Legal News from Union Syndicale

This issue of StaffMatters will focus on the
language requirements in EPSO competitions.

Please continue to send us your suggestions
for topics to address, or your questions and
comments, at StaffMatters@unionsyndicale.eu.

Waiver

Although this newsletter is accurately prepared, it cannot replace individual legal advice. Legal situations are manifold and require both complex analysis and strategic action. You should therefore not rely on general presentations or former case-law alone to draw conclusions for your concrete situation. Please turn to us timely, should you require individual legal advice and/or representation.



This newsletter is dedicated to the subject of **discrimination based on language**. It presents two recent judgments of the Grand Chamber of the European Court of Justice. Differences of treatment based on language are, in principle, not allowed in the procedures for selecting staff for the EU institutions. However, such a difference is permissible provided that it meets the actual needs of the service, is proportionate to those needs and is motivated by clear, objective and foreseeable criteria

Facts and decision in Case C-377/16

The European Parliament had launched a call for expressions of interest for the establishment of a database of candidates to work as drivers. The application form was available only in English, French and German. In addition to a thorough knowledge of one of the 24 official EU languages as 'language 1' of the selection procedure, candidates were required to have a satisfactory knowledge of English, French or German as 'language 2'. The Parliament justified that restriction on

the choice of 'language 2' by 'the interests of the service, which require newly recruited staff to be immediately operational and able to communicate effectively in their daily work' and by the fact that those three languages are the most widely used within the institution. Spain brought an action against the Parliament. The Court of Justice has jurisdiction to decide on this action further to Article 51 of the Statute of the Court (being an action of a Member State against an act of the European Parliament).

In its judgment, the Court (Grand Chamber) annuls the call for expressions of interest and declares the database established under that call void. The Staff Regulations **prohibit any discrimination, including discrimination on grounds of language**. Differences of treatment on grounds of language **may be authorised if they are justified by a legitimate objective of general interest**, such as the interests of the service or even the actual needs relating to the duties that the persons recruited will be required to carry out. In a selection procedure, the institutions enjoy a broad discretion when assessing the qualifications and merits of the candidates to be taken into consideration. However, they are required not only to ensure that any difference in treatment based on language is such as to meet the interests of the service and is proportionate thereto, but also to **justify such a difference by clear, objective and foreseeable criteria** enabling candidates to understand the grounds for that difference in treatment and the courts of the European Union to review its lawfulness.

First, the application form was available only in English, French and German. Because there was no indication that it was possible to complete the application form in any other of the official EU languages, it was reasonable for the candidates to assume that it was mandatory to complete the form in one of those three languages. This results in a difference of treatment based on language, which is in principle prohibited. The Parliament did not show that there was a **legitimate objective of general interest** justifying such a difference in treatment.

Secondly, the restriction of the choice of 'language 2' to English, French and German constituted another difference of treatment based on language. The call for applications did not justify that restriction in relation to the specific language needs relating to the functions

that the recruited drivers would have to perform. The Court observes that neither the fact that drivers must perform their duties in French-speaking or German-speaking cities, nor the fact that the persons conveyed most often use the English language, are such as to justify restricting the choice of 'language 2' to the three languages mentioned above. The Parliament did not establish how each of those languages would be particularly useful for the performance of the duties in question and why that choice could not include other official languages which may be relevant to those duties. Moreover, insofar as the Parliament has not adopted internal rules governing its language regime, it cannot be affirmed that those three languages are, necessarily, the most useful languages for all duties in that institution.



Facts and decision in Case C-621/16P

Italy had brought two actions against the Commission to the General Court. As a result, two notices of open competition of the European Personnel Selection Office (EPSO) were annulled on the grounds that it was unlawful to restrict the choice of 'language 2' of the competition to English, French and German and to restrict to those three languages the choice of language of communication between candidates and EPSO.

The Commission appealed against this before the Court of Justice seeking the annulment of the judgment of the General Court. The Court of Justice confirms the decision of the General Court and dismisses the Commission's appeal.

The Court notes that the General Court correctly held that a candidate's highest standards of ability, efficiency and integrity are independent of language knowledge. Consequently, the General Court did not err in holding that the objective of recruiting **officials of the highest standard of ability, efficiency and integrity does not justify a difference in treatment based on language**. There must be 'concrete indications' making it possible to establish, objectively, that there was an interest of the service justifying the restriction on the choice of 'language 2' of the competition.

While competition notices must be published in full in the Official Journal in all the official EU languages, EPSO is not obliged to communicate with a candidate in a language freely chosen by the latter. However, the restriction on the choice of language of communication between candidates and EPSO to a limited number of official languages must be justified. EPSO had not provided such justification.

Comments

Both judgments continue the protective line of jurisprudence on discrimination based on language. The rules limiting the choice of language must provide for clear, objective and foreseeable criteria. The administration has to provide a statement of reasons on this. In earlier case-law the instance court had given less emphasis to the language requirements and was already corrected by the Court of Justice, cf. Case C-566/10 P, Italy / Commission, of 27 November 2012.

The requirement of knowledge of specific languages may be objectively justified in the interests of the service, and the required level of knowledge of languages must be proportionate to the genuine needs of the service (cf. Case 79/74 and Case 22/75, Küster v Parliament).

Since the database in the first case discussed above was declared void, the judgment had a negative side effect for candidates who were included in the database, however not yet recruited. The Court considered that the mere inclusion of candidates in the database cannot create a legitimate expectation. Those candidates could not rely on a voided call for expressions of interest. On the other hand, the candidates who were already recruited on the basis of their inclusion in the database could rely on their legitimate expectation that their contracts concluded are upheld. So, the voiding of the database had no impact on recruitment already made.

