

SUMMARY

ECJ 26 March 2019, case C-377/16 (EP Drivers), discrimination, other forms of discrimination

Kingdom of Spain – v – European Parliament, EU Case

Legal background

Article 2 of Regulation No 1/58 stipulates determines which languages a Member State or a person subject to its jurisdiction may use in communication towards any EU institution. The reply shall be drafted in the same language. However, Article 6 provides that the institutions of the EU may stipulate in their rules of procedure which of the languages are to be used in specific cases.

The Staff Regulations and Conditions of Employment of Other Servants (CEOS) inter alia prohibits any discrimination based on language. While respecting the principle of non-discrimination and the principle of proportionality, any limitation of their application must be justified on objective and reasonable grounds and must be aimed t legitimate objectives in the general interest in the framework of staff policy. The title on ‘Recruitment’ contains requirements to be appointed. One is that the employee must have a thorough knowledge of one of the languages of the EU and a satisfactory knowledge of another language, to the extent necessary for the performance of his duties.

Facts

On 14 april 2016, the European Parliamant (EP) issued a call for expressions of interest with a view to establishing a database of candidates for recruitment as contract staff members to act as drivers. One of the job requirements was that the candidates had a thorough knowledge (at least at C1 level) of one of the EU’s languages and at least a satisfactory knowledge of English, French or German (B2 level) as second language. Since *Italy – v – Commission (C-566/10)*, the EP must provide an explanation for limiting the choice of the second language. The reason

was that it has been longstanding practice to mainly use English, French and German for internal communication in the EP. As the service requires newly recruited staff to be immediately operational and able to communicate effectively in their daily work, these languages were chosen.

The application procedure started by filling out a form which was only available in English, French or German. The EP also opened an email address specifically for the application procedure.

Action

The Kingdom of Spain asked the court to annul the call for expressions of interest, as well as the database. It asserted that it was an unlawful restriction on the choice of languages that may be used for communications. There would also be a misinterpretation of the language requirements, as knowledge of a second language would not be required given the work (Article 82 CEOS). Also, the restriction to the choice of language 2 to English, French and German would be unlawful.

Consideration

Restricting choice of language of communication

In the specific context of EU staff selection procedures, the ECJ has held that restrictions to the languages may be made, pursuant to Article 1d(6) of the Staff Regulations, to the prohibition of discrimination on grounds of language, provided that such limitations are objectively and reasonably justified by a legitimate objective of general interest in the framework of staff policy and are proportionate to the aim pursued.

Other than the EP has asserted, the application procedure cannot be deemed to not have restricted the choice of language. The electronic application form was available only in English, French or German. Without any indication that the form could be completed in any other official Union language, the candidates were reasonably entitled to assume that one of these three language had to be used. It therefore cannot be ruled out that candidates may have been effectively deprived of the possibility of using another preferred language, as a result of which they may have been at a disadvantage compared to candidates whose preferred language was one of those three languages. As the EP has not provided any grounds which may demonstrate the existence of a legitimate objective, restricting the languages has been unjustified.

Necessity of knowledge of second language

Similarly to EU officials, contract staff are required to perform their duties in a multilingual environment. There is no basis for interpreting the language skills required of contract staff in Article 82(3)(e) CEOS differently than in Article 28(f) of the Staff Regulations.

Restricting of choice of language 2 to English, French and German

It is only allowed to restrict the choice of language 2 if there exists a legitimate objective of general interest in the framework of staff policy. The institutions enjoy a wide discretion and it is not for the Court to substitute this assessment. However, the institution must demonstrate the actual needs relating to the duties that the persons recruited will be required to carry out. Moreover, any requirement relating to language skills must be proportionate to that interest and be based on clear, objective and predictable criteria.

In this light, the EP has chosen the language based on the ‘interest of the service’ and long-standing practices to use mainly English, French and German. However, there reasons are not in themselves sufficient to establish that the duties in question, namely those of driver, in practice require knowledge of one of those three languages. While the call for expressions of interest suggests that those three languages are the main EU languages, there are no rules that confirm that. Consequently, the restriction has not been justified.

Decision

The Court:

Annuls the Call for Expressions of Interest Contract Staff — Function Group I — Drivers (F/M) — EP/CAST/S/16/2016;

Declares the database established pursuant to Call for Expressions of Interest Contract Staff — Function Group I — Drivers (F/M) — EP/CAST/S/16/2016 void;

Orders the European Parliament to pay the costs.

Creator: European Court of Justice (ECJ)

Verdict at: 2019-03-26

Case number: C-377/16