

SUMMARY

ECJ 28 July 2016, case C-423/15 (Kratzer), Discrimination, abuse

<p>Applying for a job for the purpose of claiming discrimination compensation after being turned down constitutes an abuse of right.</p>

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Applying for a job for the purpose of claiming discrimination compensation after being turned down constitutes an abuse of right.

Facts

Mr Kratzer applied for a trainee position that the insurance company R+V had advertised. It was clear from the application that he was not seeking employment but merely the status of applicant in order to bring a claim for discrimination. His application was rejected. He submitted a complaint for age discrimination (later amended to also include gender discrimination), demanding compensation of € 14,000. R+V invited him to an interview. He replied that he would not come to the interview unless and until R+V had paid the compensation. R+V declined to pay, whereupon Mr Kratzer brought legal proceedings.

National proceedings

The courts of first and second instance dismissed the action. Mr Kratzer appealed to the Bundesarbeitsgericht on a point of law. It referred questions to the ECJ.

ECJ's findings

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A person making an application for a post in circumstances such as those at issue clearly is not seeking to obtain the post for which he formally applies. That person cannot, therefore, rely on the protection offered by Directives 2000/78 and 2006/54. A contrary interpretation would be incompatible with the objective pursued by those directives, which is to ensure equal treatment 'in employment and occupation' to all persons by offering them effective protection against certain forms of discrimination, in particular concerning 'access to employment'. Further, such a person cannot, in those circumstances, be regarded as a 'victim' within the meaning of Article 17 of Directive 2000/78 and Article 25 of Directive 2006/54 or a 'person injured' having sustained 'loss' or 'damage', within the meaning of Article 18 of Directive 2006/54 (§ 35-36).

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Moreover, according to settled case-law of the Court, EU law cannot be relied on for abusive or fraudulent ends. A finding of an abusive practice requires a combination of objective and subjective elements. First, with regard to the objective element, such a finding requires that it must be apparent from a combination of objective circumstances that, despite formal observance of the conditions laid down by EU rules, the purpose of those rules has not been achieved. Second, such a finding requires a subjective element, namely that it must be apparent from a number of objective factors that the essential aim of the transactions concerned is to obtain an undue advantage. The prohibition of abuse is not relevant where the economic activity carried out may have some explanation other than the mere attainment of an advantage. In order to establish the existence of the second element, which relates to the intention of operators, account may be taken, in particular, of the purely artificial nature of the transactions concerned (§ 37-41).

Judgment

Article 3(1)(a) of Council Directive 2000/78 [...] and Article 14(1)(a) of Directive 2006/54 [...] must be interpreted as meaning that a situation in which a person who in making an application for a post does not seek to obtain that post but only seeks the formal status of applicant with the sole purpose of seeking compensation does not fall within the definition of 'access to employment, to self-employment or to occupation', within the meaning of those provisions, and may, if the requisite conditions under EU law are met, be considered to be an abuse of rights.

Creator: European Court of Justice (ECJ)

Verdict at: 2016-07-28

Case number: C-423/15 (Kratzer)