



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Norway
<b>Title:</b>	Sami language requirement a genuine and determining occupational requirement
<b>Date:</b>	14 June 2016
<b>Expert:</b>	Else Leona McClimans
<b><u>Context</u></b>	
<b>Issue at stake:</b>	First court case claiming compensation because of ethnic discrimination
<b>Ground of discrimination:</b>	race/ethnic origin (language), age
<b>Source:</b>	National court decision: Judgment of 1. March 2016, the Sis-Finnmárkkku diggegoddi - Indre Finnmark tingrett (court of first instance) between <b>A</b> and X county in case number TINFI-2015-113573
<b>Field:</b>	Employment
<b>Applicable law:</b>	The Anti-Discrimination Act (ADA) of 21 June 2013 No 60, in force as of 01 January 2014, at <a href="http://www.ub.uio.no/ujur/ulovdata/lov-20130621-060-eng.pdf">http://www.ub.uio.no/ujur/ulovdata/lov-20130621-060-eng.pdf</a>

### **Content**

#### **Case:**

The court handled a case regarding a claim concerning discrimination based on ethnicity and age in municipal employment.

The background of the case is the following: A 2-year temporary position as a project manager at the Department of technical services in a municipality was announced in June 2014. Knowledge of the Sami language, both spoken and written presentation skills was a qualification for the position. Six candidates applied. The municipality conducted interviews with three of the applicants. **A** was one of these. He was 60 years old. A 31-year old applicant was ranked number one for the position and then hired, based on his command of the Sami language. The candidate ranked in second place was 41 years old and had a good command of spoken Sami. **A** was ranked as number three. In his application he had stated that he understands Sami and can make himself understood verbally. The municipality's ranking of the candidates was based on the assumption that **A** did not know Sami at all.

**A** thought he was bypassed for the position because he found the recruitment to be discriminatory, both because of his age, and the requirement of Sami language knowledge discriminatory to non-Sami speakers. He filed a complaint with the Gender Equality and Anti-Discrimination Ombud. The Ombud concluded that **A** had been subject to direct discrimination because of his age and because the municipality had illegally weighted knowledge of Sami as a qualification for the position. Language is an element of possible ethnic discrimination. (Opinion of 16 December 2014 in case number 14/1450).

The Ombud found that as **A** appeared to be better qualified than the person who had been offered the position, the burden of proof shifted to the employer. Based on the shifted burden of proof, the Ombud found that the municipality had not sufficiently explained the language requirement for the position. Subsequently, the Ombudsman found reason to believe that the applicant's age was considered in the application process. The claimant subsequently brought the case before the court to claim compensation, as the Ombud does not award compensation.

**Decision of the Court:**

The decision of the court does not follow the opinion of the Ombud. Sami is an official language in Norway. As such, the court concluded that the Sami language requirement in this case had a legitimate aim and that it was necessary to fulfil the requirement of the position. The language requirement was not disproportionately emphasized in the recruitment process. Age was not seen as the reason for choosing the other applicant, as this was related to the language requirement.

**Key points of analysis:**

Although a legal protection against discrimination because of ethnicity, including language, has been in force for more than 10 years, this judgement is the first court case in which a claimant claims compensation based on ethnic discrimination. As such the case is of interest. (The Anti-Discrimination Act of 3. June 2005 No 33 on Prohibition of discrimination based on ethnicity, religion etc (*Diskrimineringsloven*) was in force as of 1. January 2006, and was replaced by the Anti-Discrimination Act (ADA) of 21 June 2013 No 60, in force as of 01 January 2014, at <http://www.ub.uio.no/ujur/ulovdata/lov-20130621-060-eng.pdf>).

From the Norway 2015 report chapter 11.1:

Statistics on discrimination cases in Norway show that although the courts do handle discrimination cases, and although the number of cases handled by courts is increasing, the by far overwhelming number of discrimination cases in Norway is channelled through the administrative bodies, the Equality Ombud and the Equality Tribunal. This has in particular consequences in relation to an assessment of compliance with EU law in terms of sanctions, as the Equality Ombud/ Tribunal does not enforce the clauses relating to sanctions in the form of liability for damages/ redress/ compensations. The fact that the Equality Ombud and the Equality Tribunal cannot award compensation has been criticised, and it has been proposed that the Equality Tribunal be given powers to award damages for non-economic loss in cases concerning a breach of the prohibition against discrimination.

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