



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

NEWS REPORT

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| Country: | Denmark |
| Title: | Board of Equal Treatment ruling on so-called "language barrier" |
| Date: | 10 October 2016 |
| Expert: | Pia Justesen |
| <u>Context</u> | |
| Issue at stake: | Does it constitute discrimination to reject a job applicant for a position as an organ player in a church due to lack of Danish language skills? |
| Ground of discrimination: | Ethnic origin |
| Source: | Board of Equal Treatment, decision No. 9505 delivered on 6 May 2016 |
| Field: | Employment |
| Applicable law: | Section 2 and 7 of the Act on Prohibition of Discrimination in the Labour Market etc. |

Content

Case:

The case dealt with an organ player who was born in and had grown up in Taiwan. She was a graduate from the academy of music in Vienna and had a degree from the Danish church music school of Zealand. She had lived in Denmark since 2006.

The woman applied for a position as an organ player in a church. One of the job tasks would be to establish and run a children's choir. She got a job interview and later received an e-mail with a job rejection. In the e-mail the parochial church council wrote that they had found a "language barrier, which we recommend that you address if you want to apply for a similar position in the future." The organ player was uncomprehending to the job rejection because she had passed the official Danish language test and because she had previously taught music to children.

When the organ player realized that the church did not establish a children's choir after appointing another organ player, she filed a complaint with the Board of Equal Treatment for discrimination because of ethnic origin.

Decision of the Board:

The Board stated that the requirement of special Danish language capabilities could constitute indirect discrimination based on ethnic origin if the requirements are unjustified with reference to the nature of the position in question. According to the Board the church had rejected the organ player because of her lack of Danish language skills. On that basis the organ player had established facts of possible discrimination. The Board, however, did not find that the church could prove that a language barrier was a hindrance to the woman's handling of the position as an organ player.

The Board decided in favour of the organ player. The Board concluded that she had been indirectly discriminated against because of ethnic origin in violation of the Act on Prohibition of Discrimination in the Labour Market etc. The Board awarded the organ player a compensation of DKK 25.000 (approx. € 3360).

Key points of analysis:

The decision illustrates that it constitutes indirect discrimination to request a disproportionately high level of Danish language skills from a job applicant with an ethnic minority background. The decision also illustrates that the employer has to prove that a requirement for Danish language skills is operationally well founded and necessary.

Internet link source:

<https://www.retsinformation.dk/Forms/R0710.aspx?id=181882>.