



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

### **FLASH REPORT**

<b>Country:</b>	Iceland
<b>Title:</b>	Minister of Education, Science and Culture files suit against victim of gender-equality discrimination
<b>Date:</b>	18 September 2020.
<b>Expert:</b>	Herdís Thorgeirsdóttir
<b><u>Context</u></b>	Appointment of Post violation of Gender Equality Act
<b>Issue at stake:</b>	Minister of Education, Science and Culture files suit against the victim of discrimination in an attempt to invalidate ruling
<b>Grounds of discrimination:</b>	Gender
<b>Field of application:</b>	Employment
<b>Source:</b>	National court decision
<b>Applicable law:</b>	Gender Equality Act No. 10/2008

### **Content**

The Minister of Education, Science and Culture intends to initiate legal proceedings against a woman who was a victim of a violation of the Gender Equality Act according to the ruling of the Gender Equality Complaints Committee on 27 May 2020. The Gender Equality Complaints Committee held that enough likelihood had been adduced that the Minister of Education, Science and Culture had violated the Gender Equality Act (Article 26) when appointing a man instead of the female claimant. By taking legal action, the Minister of Education, Science and Culture is seeking to have the ruling of the Complaints Committee invalidated. The Complaints Committee held that the Minister of Education, Science and Culture had undervalued the claimant when comparing her with the male candidate who was later appointed, with regard to their education, experience in public administration, leadership qualities and competence to express themselves in speech and writing, which were all unequivocal requirements in the advertisement for the post of Permanent Secretary. Taking the above into consideration and following a more thorough analysis by the Complaints Committee of the individual aspects of the advertisement for the post, the claimant was able to show with enough likelihood that she had been discriminated against on the grounds of gender when the man was appointed and that Article 26, para. 4 of the Gender Equality Act No. 10/2008, applied in this case. According to this provision, a defendant who is alleged to have discriminated against a person must demonstrate that the grounds for the treatment were not gender-based, unless such discrimination can be justified in a relevant manner with reference to a lawful aim and the methods used to achieve the aim are appropriate and necessary. The Minister of Education, Science and Culture did not succeed in proving, in the eyes of the Complaints Committee, that other factors than gender were at play.

The man appointed to the post of Permanent Secretary was considered 1 of the 4 most qualified candidates of a total of 13 who applied. The female claimant did not get into the league of four and hence it was considered likely that discrimination had already occurred during the appointment process.

According to the Gender Equality Act, the rulings of the Complaints Committee are binding for the parties to each case. The parties may refer the Committee's rulings to the courts.<sup>1</sup>

The Minister of Education, Science and Culture sought legal advice before deciding to seek to have the ruling of the Gender Equality Complaints Committee invalidated. Accordingly, the Minister was advised that there were legal shortcomings in the ruling and furthermore that the ruling, if uncontested, would bring with it legal uncertainty. Article 5, paragraph 6 of the Gender Equality Act No. 10/2008 provides:

If the ruling of the Gender Equality Complaints Committee is in the claimant's favour but the respondent does not accept the Complaints Committee's ruling and brings an action to have it annulled by the courts, the claimant's legal costs, both at the district court and the Supreme Court level, shall be paid by the Treasury.

The only option for the Minister of Education, Science and Culture to seek annulment of the Gender Equality Complaints Committee is by suing the individual it ruled in favour of. The Directorate of Gender Equality declared after the Minister's intention was known that this method of suing an individual in order to annul a ruling of the Complaints Committee needs revision.<sup>2</sup>

The claimant's lawyer considers that this attempt of the Minister of Education, Science and Culture will have a chilling effect on others who consider themselves victims of gender discrimination if they fear that legal action will be taken against them.

**Internet link source:**

<https://www.ruv.is/frett/2020/06/24/lilja-hofdar-mal-vegna-eigin-brots-a-jafnrettislogum>;

<https://www.ruv.is/frett/2020/06/25/tilefni-ad-endurskoda-tha-leid-sem-radhera-nytir-ser>.

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<sup>1</sup> Article 5(4) of the Gender Equality Act No. 10/2008.

<sup>2</sup> <https://www.ruv.is/frett/2020/06/25/tilefni-ad-endurskoda-tha-leid-sem-radhera-nytir-ser>.