



NEWS REPORT

Date: 28 December 2009
Expert: Latraverse, Sophie
Title: Conseil d'Etat, Plenary session, 30 October, 2009, n°298348
Country: France

Context

Issue at stake: Direct application of Directive 2000/78 by the High Administrative Court to quash individual administrative decision of a magistrate and consequences of this directive on the rules of implementation of the proof by the administrative judge in discrimination matters

Ground of discrimination: of all grounds

Source: National court decision

Field: Employment

Legislative provisions: Article 10 of Directive 2000/78

Content

Case: The status of magistrates is regulated by Ordinance no 58-1270 of December 22, 1958, applicable to both prosecution and state magistrates, as well as to judges on the bench. Contrary to the Law no 83-634 of July 3rd, 1983 regulating the status of civil servants, it includes no provision prohibiting discrimination.

In this context, the President of the magistrates' union *Syndicat de la magistrature*, presented a claim to both the Halde and the Conseil d'Etat, alleging that her nomination at the National School of Magistrates (ENM) had been denied for discriminatory reasons based on her union activities (a ground prohibited by law in France). The Halde investigated the claim, concluded to discrimination on the ground of union activities and presented its observations before the Conseil d'Etat.

Decision of the Court: The Conseil d'Etat, in plenary session including all chambers of the High Administrative Court, concluded that the petitioner had not been a victim of discrimination on the ground of union activities. It concluded that the Petitioner and the Halde had presented a prima facie case of discrimination, but further observed that the justifications given by the Minister of Justice to substantiate the non appointment of the petitioner to the ENM were justified and proportionate.

Internet link source and additional information:

<http://www.conseil-etat.fr/cde/node.php?articleid=1839>

