

2. Orders *Artegodan GmbH* to pay the costs.

(¹) OJ C 195, 17.7.2010.

**Judgment of the Court (Second Chamber) of 19 April 2012
(reference for a preliminary ruling from the
Bundesarbeitsgericht (Germany)) — Galina Meister v
Speech Design Carrier Systems GmbH**

(Case C-415/10) (¹)

**(Directives 2000/43/EC, 2000/78/EC and 2006/54/EC —
Equal treatment in employment and occupation — Worker
showing that he meets the requirements listed in a job adver-
tisement — Right of that worker to have access to
information indicating whether the employer has recruited
another applicant)**

(2012/C 165/06)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: Galina Meister

Defendant: Speech Design Carrier Systems GmbH

Re:

Reference for a preliminary ruling — Bundesarbeitsgericht — Interpretation of Article 19(1) of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23), Article 8(1) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22) and Article 10(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — Equal treatment in the area of employment and work — Burden of proof — Right of a person whose application for a job in a private company was unsuccessful to receive full information concerning the selection procedure in order to be able to prove discrimination

Operative part of the judgment

Article 8(1) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 10(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general

framework for equal treatment in employment and occupation and Article 19(1) of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation must be interpreted as not entitling a worker who claims plausibly that he meets the requirements listed in a job advertisement and whose application was rejected to have access to information indicating whether the employer engaged another applicant at the end of the recruitment process.

Nevertheless, it cannot be ruled out that a defendant's refusal to grant any access to information may be one of the factors to take into account in the context of establishing facts from which it may be presumed that there has been direct or indirect discrimination. It is for the referring court to determine whether that is the case in the main proceedings, taking into account all the circumstances of the case before it.

(¹) OJ C 301, 6.11.2010.

**Judgment of the Court (Third Chamber) of 19 April 2012
(reference for a preliminary ruling from the Högsta
domstolen — Sweden) — Bonnier Audio AB, Earbooks
AB, Norstedts Förlagsgrupp AB, Piratförlaget AB,
Storyside AB v Perfect Communication Sweden AB**

(Case C-461/10) (¹)

**(Copyright and related rights — Processing of data by
internet — Infringement of an exclusive right — Audio
books made available via an FTP server via internet by an
IP address supplied by an internet service provider —
Injunction issued against the internet service provider
ordering it to provide the name and address of the user of
the IP address)**

(2012/C 165/07)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicants: Bonnier Audio AB, Earbooks AB, Norstedts Förlagsgrupp AB, Piratförlaget AB, Storyside AB

Defendant: Perfect Communication Sweden AB

Re:

Reference for a preliminary ruling — Högsta domstolen — Interpretation of Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54) and Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45) — Intellectual property — Exclusive right held by publishing companies to make audio books available to the public — Alleged infringement of that right in that those audio books were made accessible via an FTP (File transfer protocol) server, an internet file-sharing program — Order that the internet service provider which provides the internet link to the server by allocating it an IP address supply to the copyright owner information regarding the names and addresses of persons registered as users of that IP address during a given period

Operative part of the judgment

Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC must be interpreted as not precluding the application of national legislation based on Article 8 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights which, in order to identify an internet subscriber or user, permits an internet service provider in civil proceedings to be ordered to give a copyright holder or its representative information on the subscriber to whom the internet service provider provided an IP address which was allegedly used in an infringement, since that legislation does not fall within the material scope of Directive 2006/24;

It is irrelevant to the main proceedings that the Member State concerned has not yet transposed Directive 2006/24, despite the period for doing so having expired;

Directives 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) and 2004/48 must be interpreted as not precluding national legislation such as that at issue in the main proceedings insofar as that legislation enables the national court seised of an application for an order for disclosure of personal data, made by a person who is entitled to act, to weigh the conflicting interests involved, on the basis of the facts of each case and taking due account of the requirements of the principle of proportionality.

⁽¹⁾ OJ C 317, 20.11.2010.

Judgment of the Court (First Chamber) of 19 April 2012 (reference for a preliminary ruling from the Oberster Gerichtshof (Austria)) — Wintersteiger AG v Products 4U Sondermaschinenbau GmbH

(Case C-523/10) ⁽¹⁾

(Regulation (EC) No 44/2001 — Jurisdiction and the enforcement of judgments in civil and commercial matters — Jurisdiction ‘in matters relating to tort, delict or quasi-delict’ — Determination of the place where the harmful event occurred or may occur — Website of a referencing service provider operating under a country-specific top-level domain of a Member State — Use, by an advertiser, of a keyword identical to a trade mark registered in another Member State)

(2012/C 165/08)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Wintersteiger AG

Defendant: Products 4U Sondermaschinenbau GmbH

Re:

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Determination of jurisdiction in respect of an action seeking to prohibit the registration of a sign identical to a trade mark with a service provider operating an internet search engine in order that, following the entry of that sign as a search term (‘AdWord’), the screen automatically displays advertising for goods or services identical with or similar to those for which the trade mark at issue is registered — Situation in which the trade mark is protected in a first Member State and the said display of advertising functions only at the top-level domain of that search engine specific to another Member State, while being accessible from the first Member State and in the official language of that latter State — Criteria for determining the ‘place where the harmful event occurred or may occur’

Operative part of the judgment

Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action relating to infringement of a trade mark registered in a Member State because of the use, by an advertiser,