



## Reports of Cases

**Case C-423/15**

**Nils-Johannes Kratzer**  
v  
**R+V Allgemeine Versicherung AG**

(Request for a preliminary ruling from the  
Bundesarbeitsgericht)

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment in employment and occupation — Article 3(1)(a) — Directive 2006/54/EC — Equal opportunities and equal treatment between men and women in matters of employment and occupation — Article 14(1)(a) — Scope — Definition of ‘access to employment, to self-employment or to occupation’ — Application for a post for the purpose of acquiring the formal status of applicant only in order to claim compensation for discrimination — Abuse of rights)

Summary — Judgment of the Court (First Chamber), 28 July 2016

1. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Limits — Jurisdiction of the national court — Establishing and assessing the facts of the dispute*  
*(Art. 267 TFEU)*
2. *EU law — Abusive exercise of a right stemming from an EU provision — Actions constituting abuse — Elements to be taken into consideration — Verification a matter for the national court*
3. *Social policy — Equal treatment in employment and occupation — Directives 2000/78 and 2006/54 — Scope — Definition of ‘access to employment, to self-employment or to occupation’ — Application for a post for the purpose of acquiring the formal status of applicant only in order to claim compensation for discrimination — Precluded — Misuse of rights — Condition*

*(European Parliament and Council Directive 2006/54, Arts 14(1)(a), 18 and 25; Council Directive 2000/78, Arts 3(1)(a) and 17)*

1. See the text of the decision.

(see para. 27)

2. See the text of the decision.

(see paras 37-42)

3. Article 3(1)(a) of Directive 2000/78 establishing a general framework for equal treatment in employment and occupation and Article 14(1)(a) of Directive 2006/54 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 meaning that a situation in which a person who in making an application for a post does not seek to obtain that post but only seeks the formal status of applicant with the sole purpose of seeking compensation does not fall within the definition of ‘access to employment, to self-employment or to occupation’, within the meaning of those provisions, and may, if the requisite conditions under EU law are met, be considered to be an abuse of rights.

According to the actual wording of the titles of those directives, they concern employment and occupation.

However, a person making an application for a post in the aforementioned circumstances clearly is not seeking to obtain the post for which he formally applies. That person cannot, therefore, rely on the protection offered by Directives 2000/78 and 2006/54. A contrary interpretation would be incompatible with the objective pursued by those directives, which is to ensure equal treatment ‘in employment and occupation’ to all persons by offering them effective protection against certain forms of discrimination, in particular concerning ‘access to employment’.

Furthermore, such a person cannot, in those circumstances, be regarded as a ‘victim’ within the meaning of Article 17 of Directive 2000/78 and Article 25 of Directive 2006/54 or a ‘person injured’ having sustained ‘loss’ or ‘damage’, within the meaning of Article 18 of Directive 2006/54.

(see paras 31, 35, 36, 44, operative part)