

## LEGAL UPDATE LABOUR AND EMPLOYMENT LAW

Cologne, 17 June 2025

# Background checks during the application process

Timo Rehfisch

---

Cover letter, certificates and the job interview are all important bases for making decisions in the application process. Employers are increasingly questioning whether additional information is required as a foundation for making a decision on a candidate other than that provided by applicants themselves.

The Düsseldorf Regional Labour Court (Landesarbeitsgericht, LAG) had to make a decision on the admissibility of carrying out a background check on an applicant and dealt with the question of whether a Google search is permitted as part of the application process and if this may be used to make a decision on a candidate.

The Düsseldorf LAG held that a Google search carried out as part of the ongoing application process was lawful data processing in accordance with Art. 6 (1) sentence 1 (b) of the General Data Protection Regulation (GDPR), if there was a specific reason for this. In doing so, employers must take into account whether they are subject to the obligation in accordance with Art. 14 (1) (d) GDPR to inform the applicant about the data not directly collected and processed by the employer. If the employer infringes this obligation the applicant has the right to receive compensation for non material losses in accordance with Art. 82 (1) GDPR as the applicant has

not had the opportunity to comment on the additional information collected by the employer.

This decision of the Düsseldorf LAG has now been expressly affirmed by the Federal Labour Court (Bundesarbeitsgericht, BAG) in its judgment dated 5 June 2025 (8 AZR 117/24).

### Facts of the matter

The respondent, a state university, had advertised a position for a fully qualified lawyer. This role comprised, in particular, advising the university's Discrimination Complaints Office. The claimant, a self-employed lawyer applied for the role at the respondent and was invited to a job interview along with two other applicants. Notes were made on each candidate about selection for the role after the interviews. In the claimant's notes it said that using information from publicly available sources it had been found out the claimant was currently subject to criminal proceedings against him and although the decision was not yet final he was going to be sentenced to a suspended sentence for commercial fraud. During the course of the criminal proceedings the claimant was found to have made fictitious applications to employers so that he could claim compensation and damages for discrimination under the provisions of the General Equal

Treatment Act (Allgemeines Gleichbehandlungsgesetz, AGG).

There was a Wikipedia entry about the claimant which provided information about the criminal proceedings.

### Decisions of the Düsseldorf LAG and the BAG

The Düsseldorf LAG held that the claimant was not suffered any material losses but was entitled to compensation for non material losses in accordance with Art 82 (1) GDPR in the amount of EUR 1,000,00 in its judgment dated 10 April 2024 (12 Sa 1007/23).

The chamber made it very clear that online searches made by the respondent were classed as data processing in accordance with Art. 4 (2) GDPR which was lawful in accordance with Art. 6 (1) sentence 1 (b) GDPR even without the consent of the claimant. Art. 6 (1) sentence 1 (b) GDPR permits data processing that is necessary in order to take steps prior to entering into a contract (the preparation and commencement of an employment contract) at the request of the data subject (the job application). This was necessary due to the university's obligation as a public employer to determine the aptitude of applicants in accordance with Art. 33 (2) of the German Basic Law (Grundgesetz, GG). Therefore a Google search is not necessarily unlawful.

The chamber left the question expressly open of whether online searches without cause about the applicant's person are lawful. It held that in this case there was a reason for obtaining more information: one member of the interview committee was familiar with the name of the claimant. This was also sufficient reason, in the opinion of the Düsseldorf LAG, to carry out further searches about the claimant.

The court held that if an employer carries out such a warranted Google search the employer is, however, obligated to inform the applicant about the collection of data and, in particular, about the category of the collected data – here the criminal proceedings – in accordance with Art. 14 GDPR. If the employer does not comply with this obligation to provide information and uses this collected information in the process of filling the role, the applicant is then entitled to compensation in accordance with Art. 82 (1) GDPR.

The LAG expressly rejected a prohibition on using the judgment of the Criminal Court for evaluating the application, as the online searches were lawful as such and the infringement of the obligation to provide information does not give grounds for such a prohibition.

The BAG expressly affirmed the decision of the Düsseldorf LAG on appeal. It held that the claimant was entitled to compensation for non material losses in the amount of EUR 1,000.

### Comments

The decisions show that in the application process employers do not have to solely rely on information provided by an applicant. However, (lawful) searches by the employer firstly assume, however, that they are required to assess the aptitude of the applicant. In addition, there must be reasons to justify collecting information from third parties.

In order to completely exclude applicants' rights to compensation, the employers must ensure that after conducting an online search the applicant is informed of this in as specific terms as possible so that they are able to comment on it if necessary. It remains to be seen whether routine, i.e. online searches conducted without any reason are likewise lawful.

**Note**

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Timo Rehfish on +49 221 33660-541 or by email to [trehfish@goerg.de](mailto:trehfish@goerg.de). For further information about the author visit our website [www.goerg.com](http://www.goerg.com).

## Our Offices

GÖRG Partnerschaft von Rechtsanwälten mbB

**BERLIN**

Kantstr. 164, 10623 Berlin  
Phone +49 30 884503-0  
Fax +49 30 882715-0

**HAMBURG**

Alter Wall 20 - 22, 20457 Hamburg  
Phone +49 40 500360-0  
Fax +49 40 500360-99

**FRANKFURT AM MAIN**

Ulmenstr. 30, 60325 Frankfurt am Main  
Phone +49 69 170000-17  
Fax +49 69 170000-27

**COLOGNE**

Kennedyplatz 2, 50679 Cologne  
Phone +49 221 33660-0  
Fax +49 221 33660-80

**MUNICH**

Prinzregentenstr. 22, 80538 Munich  
Phone +49 89 3090667-0  
Fax +49 89 3090667-90