

SUMMARY

ECJ 16 July 2015, case C-83/14 (CHEZ Razpredelenie Bulgaria AD - v - Komisia za zashtita ot diskriminatsia), Nationality discrimination

Facts

Ms Nikolova runs a grocer's shop in a district of the town of Dupnitsa, a district inhabited by individuals of Roma origin. In 1999 and 2000, the electricity company CHEZ installed the electricity meters for all the consumers of that district on the concrete pylons forming part of the overhead electricity supply network, at a height of between six and seven metres, whereas in the other districts the meters installed by CHEZ are placed at a height of 1.70 metres, usually in the consumer's property, on the façade or on the wall around the property ('the practice at issue').

In December 2008, Ms Nikolova lodged an application with the Bulgarian Commission for Protection against Discrimination (KZD) in which she contended that the reason for the practice at issue was that most of the inhabitants of the her district were of Roma origin, and that she was accordingly suffering direct discrimination on the grounds of nationality ('narodnost'). She complained in particular that she was unable to check her electricity meter for the purpose of monitoring her consumption and making sure that the bills sent to her, which in her view overcharged her, were correct.

National proceedings

The Administrative Court of Sofia referred questions to the ECJ on the concept of 'ethnic origin' in Directive 2000/43 and on certain aspects of that Directive. The Court noted that it

was apparent from the context of the case that CHEZ considered that it is above all persons of Roma origin who make unlawful electricity connections. The court also noted that in the almost identical case of *Belov* (C-394/11), the ECJ declined jurisdiction.

ECJ's findings

[The ECJ's findings are omitted because this is not an employment law case. The court's judgment is, however, interesting enough for employment lawyers to reproduce in EELC.]

Ruling

The concept of 'discrimination on the grounds of ethnic origin', for the purpose of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and, in particular, of Articles 1 and 2(1) thereof, must be interpreted as being intended to apply in circumstances such as those at issue before the referring court — in which, in an urban district mainly lived in by inhabitants of Roma origin, all the electricity meters are placed on pylons forming part of the overhead electricity supply network at a height of between six and seven metres, whereas such meters are placed at a height of less than two metres in the other districts — irrespective of whether that collective measure affects persons who have a certain ethnic origin or those who, without possessing that origin, suffer, together with the former, the less favourable treatment or particular disadvantage resulting from that measure.

Directive 2000/43, in particular Article 2(1) and (2)(a) and (b) thereof, must be interpreted as precluding a national provision which lays down that, in order to be able to conclude that there is direct or indirect discrimination on the grounds of racial or ethnic origin in the areas covered by Article 3(1) of the directive, the less favourable treatment or the particular disadvantage to which Article 2(2)(a) and (b) respectively refer must consist in prejudice to rights or legitimate interests.

Article 2(2)(a) of Directive 2000/43 must be interpreted as meaning that a measure such as that described in paragraph 1 of this operative part constitutes direct discrimination within the meaning of that provision if that measure proves to have been introduced and/or maintained for reasons relating to the ethnic origin common to most of the inhabitants of the district concerned, a matter which is for the referring court to determine by taking account of all the relevant circumstances of the case and of the rules relating to the reversal of the burden of proof that are envisaged in Article 8(1) of the directive. Article 2(2)(b) of Directive 2000/43 must be interpreted as meaning that:

that provision precludes a national provision according to which, in order for there to be indirect discrimination on the grounds of racial or ethnic origin, the particular disadvantage must have been brought about for reasons of racial or ethnic origin;

the concept of an ‘apparently neutral’ provision, criterion or practice as referred to in that provision means a provision, criterion or practice which is worded or applied, ostensibly, in a neutral manner, that is to say, having regard to factors different from and not equivalent to the protected characteristic;

the concept of ‘particular disadvantage’ within the meaning of that provision does not refer to serious, obvious or particularly significant cases of inequality, but denotes that it is particularly persons of a given racial or ethnic origin who are at a disadvantage because of the provision, criterion or practice at issue;

assuming that a measure, such as that at issue, does not amount to direct discrimination within the meaning of Article 2(2)(a) of the directive, such a measure is then, in principle, liable to constitute an apparently neutral practice putting persons of a given ethnic origin at a particular disadvantage compared with other persons, within the meaning of Article 2(2)(b); such a measure would be capable of being objectively justified by the intention to ensure the security of the electricity transmission network and the due recording of electricity consumption only if that measure did not go beyond what is appropriate and necessary to achieve those legitimate aims and the disadvantages caused were not disproportionate to the objectives thereby pursued. That is not so if it is found, a matter which is for the referring court to determine, either that other appropriate and less restrictive means enabling those aims to be achieved exist or, in the absence of such other means, that that measure prejudices excessively the legitimate interest of the final consumers of electricity inhabiting the district concerned, mainly lived in by inhabitants of Roma origin, in having access to the supply of electricity in conditions which are not of an offensive or stigmatising nature and which enable them to monitor their electricity consumption regularly.

Creator: European Court of Justice (ECJ)

Verdict at: 2015-07-16

Case number: C-83/14