

SUMMARY

ECJ 5 February 2015, C-317/14 (European Commission – v – Kingdom of Belgium), Nationality discrimination

Facts

Belgian law requires candidates applying for a post in the public service to provide evidence that they have sufficient knowledge of the local language, which is French, Dutch or German, depending on where the post is situated. If the candidate has a certificate issued by the relevant Belgian authority, he or she need not sit an examination. In the absence of such a certificate, the candidate must apply, and sit, an examination to test his or her knowledge of the language in question.

Commission's action

In 2010, the European Commission sent the Belgian government a notice to the effect that the said requirement constitutes discrimination prohibited by Article 45 TFEU and Regulation 1612/68 (replaced in 2011 by Regulation 492/2011). The Belgian government did not contest the substance of the action but responded that it needed more time, given the complex structure of the country.

ECJ's findings

The right of a Member State to require a certain level of knowledge of a language in view of the nature of the post must not encroach upon the free movement of workers. The requirements under measures intended to implement that right must not in any



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circumstances be disproportionate to the aim pursued and the manner in which they are applied must not bring about discrimination against nationals of other Member States (§ 25). The possession of a diploma certifying that the candidate has passed a language examination may constitute a criterion for assessing the required linguistic knowledge (§ 27). However, to require that a person applying to take part in a recruitment competition provide evidence of his linguistic knowledge exclusively by means of one particular type of certificate, issued only by one particular Belgian body tasked with conducting language examinations in Belgium for that purpose, appears, in view of the requirements of the freedom of movement of workers to be disproportionate to the aim pursued. That requirement precludes any consideration of the level of knowledge which a holder of a diploma obtained in another Member State can be assumed to possess on the evidence of that diploma. Moreover, that requirement, although applicable to Belgian nationals and to those of other Member States alike, in practice puts nationals of other Member States wishing to apply for a post in a local service in Belgium at a disadvantage. It effectively forces interested persons residing in other Member States, for the most part nationals of those Member States, to travel to Belgium for the sole purpose of having their knowledge tested in a mandatory examination, in order to obtain the certificate required for their application. The additional expenses that requirement entails are liable to make it more difficult to gain access to the posts in question (§ 28-31).

Ruling

The ECJ declares that by requiring candidates for posts in the local services established in the French-speaking or German-speaking regions, whose diplomas or certificates do not show that they were educated in the language concerned, to provide evidence of their linguistic knowledge by means of one particular type of certificate, issued only by one particular Belgian body following an examination conducted by that body in Belgium, the Kingdom of Belgium has failed to fulfil its obligations under Article 45 TFEU and Regulation (EU) No 492/2011 on freedom of movement for workers within the Union.

Creator: European Court of Justice (ECJ) **Verdict at**: 2015-02-05 **Case number**: C-317/14