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Press and Information

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Judgment of the Court of Justice in Case C-54/07

Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV

PUBLIC STATEMENTS BY WHICH AN EMPLOYER LETS IT BE KNOWN THAT IT DOES NOT RECRUIT EMPLOYEES OF A PARTICULAR ETHNIC ORIGIN CONSTITUTE DIRECT DISCRIMINATION

The absence of an identifiable complainant does not mean that there is no direct discrimination

Directive 2000/43/EC¹ aims to establish a framework for combating discrimination on grounds of race or ethnic origin in order to implement the principle of equal treatment in the Member States. Belgian legislation allows the Centre for equal opportunities and combating racism, a body charged with the task of promoting equal treatment in Belgium, to bring legal proceedings where discrimination exists or could exist, even in the absence of an identifiable complainant.

Feryn is a company specialising in the installation of garage doors. The Centre brought an action before the Belgian labour courts seeking a declaration that Feryn had applied a discriminatory recruitment policy. It relies on the public statements made by a director of that company in which he stated, in essence, that his company was seeking to recruit installers but it could not take on employees of a particular ethnic origin ('immigrants') owing to the reluctance of its customers to give such persons access to their homes during the installation work.

In essence the question before the Court of Justice is whether such statements made by an employer in the context of a recruitment process constitute discrimination if there is no identifiable complainant who considers himself to be the victim of it.

The Court, pointing to the objective of the Directive, considers that **the absence of an identifiable complainant does not permit the conclusion that there is no direct discrimination** within the meaning of the Directive. The promotion of a labour market that is favourable to social inclusion would be difficult to achieve if it were limited solely to cases in which an unsuccessful candidate for a post brought legal proceedings against an employer on the basis of discrimination. Furthermore, such statements are likely to strongly dissuade some applicants from applying for the post. They **thus constitute direct discrimination in respect of recruitment within the meaning of the Directive**.

¹ 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).

The Court then rules on the question of the **reversal of the burden of proof** in a situation in which the existence of a discriminatory recruitment policy is alleged by reference to statements made publicly by an employer with regard to its recruitment policy. The Court states that it is for the employer to prove that it has not infringed the principle of equal treatment. It is then for the national court to ascertain whether the facts alleged are established and to assess the sufficiency of the evidence put forward to support the employer's claims that it has not infringed the principle of equal treatment. The Court goes on to state that **public statements by which an employer lets it be known that under its recruitment policy it will not recruit any employees of a certain ethnic or racial origin are sufficient for the purposes of the Directive to give rise to a presumption of the existence of a recruitment policy which is directly discriminatory.**

Finally, the Court rules on the question of **what sanctions are appropriate for recruitment discrimination** of the kind at issue. The Directive requires that the Member States **provide effective, proportionate and dissuasive sanctions, even where there is no identifiable victim.** The Court states that they may consist, in particular, in a finding of discrimination by the national court in conjunction with an adequate level of publicity, in an order that the employer cease the discriminatory practice, or in an award of damages to the body bringing the proceedings.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: CS, DE, EL, EN, ES, FR, HU, IT, NL, PL, PT, SK, SL

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-54/07>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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Pictures of the delivery of the judgment are available on EbS "Europe by Satellite", a service provided by the European Commission, Directorate-General Press and Communications,

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