



Race Equality Directive



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Directive 2000/43/EC – the Race Equality Directive

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

Applies to all persons

- Both in **public and private sector**
- **Regardless of nationality**
- Also when there is **no identifiable victim** – C-54/07 Feryn

Company did not want to hire “persons of foreign origin” (allochtonen)

No foreigners applied – no identifiable victim (see C-81/12 Asociația Accept)

But still DIRECT DISCRIMINATION

Based on racial or ethnic origin

*C-83/14 CHEZ para 46: Roma covered:
“the concept of ethnicity, which has its origin in
the idea of societal groups marked in particular
by **common nationality, religious faith,
language, cultural and traditional origins
and backgrounds**, applies to the Roma
community” (ECHR case-law quoted)*

ECtHR – Timishev v Russia

- Ethnicity and race are **related and overlapping concepts**.
- Notion of **race** is rooted in the idea of **biological classification** of human beings into subspecies according to morphological features such as **skin colour or facial characteristics**
- Ethnicity has its origin in the **idea of societal groups** marked by common nationality, tribal affiliation, religious faith, language, cultural/traditional origins and backgrounds

Case C-391/09 Runevic-Vardyn

CJEU did not rule on whether the Polish minority in Lithuania is covered as the case was out of scope

C-54/07 Feryn

*“Persons of foreign origin” (“allochtonen”) –
CJEU interpretation: “an employer declares
publicly that it will not recruit employees of a
certain ethnic or racial origin”*

C-668/15 Jyske Finans

*Danish loan provider requested copies of
passport or residence permit from persons
born outside of EU and Efta countries,
even if DK citizens*

- **Country of birth is only one of the specific factors** which may justify the conclusion that a person is a member of an ethnic group - **not decisive** in that regard.
- Ethnic origin **cannot be determined on the basis of a single criterion** but, on the contrary, is **based on a whole number of factors, some objective and others subjective**. Moreover, it is not disputed that a **country of birth cannot, in general and absolute terms, act as a substitute for all the criteria**.
- As a consequence, a **person's country of birth cannot, in itself, justify a general presumption that that person is a member of a given ethnic group** such as to establish the existence of a direct or inextricable link between those two concepts.
- Furthermore, it **cannot be presumed that each sovereign State has one, and only one, ethnic origin**.

Case C-457/17 Maniero

- *Access to scholarship required having passed the German Erste Staatsprüfung*
- *Complainant Italian citizen born and resident in DE. Bachelor of law degrees in Armenia.*
- *Claimed indirect discrimination on the basis of ethnicity*

- The documents in the case **do not show that persons of a certain ethnicity are more affected than persons of other ethnicities** by the condition to have passed the *Erste Staatsprüfung*
- Has to be **assessed in a specific and concrete way against** the less favourable treatment concerned

BUT

*Discrimination on the ground of **nationality is not covered by the Directive***

BUT

Article 18 TFEU:

“Within the scope of application of the Treaties, and without prejudice to any special provision contained therein, any **discrimination on grounds of nationality** shall be prohibited.”

Discrimination covered

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Direct discrimination

"Direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin"

(example: Feryn)

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Indirect discrimination

"where an **apparently neutral provision**, criterion or practice would put persons of a racial or ethnic origin **at a particular disadvantage compared with other persons**, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary." (art 2(1)RED)

"liable to arise when a measure, albeit formulated in neutral terms, **works to the disadvantage of far more persons possessing the protected characteristic** than persons not possessing it " (judgment C-83/14, CHEZ)

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- **Harassment**

- **Instruction to discriminate**

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Discrimination by association/assumption

Discrimination by association:

- *mother of a disabled child (C-303/06 Coleman),*
- *girlfriend of a Roma man (ECHR, Skorjanec v Croatia, judgment 28 March 2017) –attacked because of actual or presumed association with a person who has or is perceived to have the perceived characteristic (outside scope of RED)*

Discrimination by assumption(perception)

The person is not Roma, but is discriminated against because (s)he is perceived to be Roma

C-83/14 CHEZ

- **Not clear from the wording of RED** whether only persons who actually are of the race/ethnicity concerned by the discrimination are protected – consider **context, systematics and objective of RED** (para 55)
- RED is an **expression of the principle of equality** (Article 21 of Charter) **and applies to all** (Article 3(1) RED)
- **Cannot be interpreted restrictively**

"while accepting that, as Ms Nikolova asserts before the Court, she is **not of Roma origin**, the fact remains that **it is indeed Roma origin**, in this instance that of most of the other inhabitants of the district in which she carries on her business, **which constitutes the factor** on the basis of which she considers that she has suffered **less favourable treatment** or a particular disadvantage." (para 59)

*Para 60: "must be interpreted as being intended to apply in circumstances (...)— 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***

Conclusion: RED covers both discrimination by assumption and discrimination by association

Scope covered

- (a) **conditions for access to employment**, to **self-employment** and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- (b) access to all types and to all levels of **vocational guidance**, **vocational training**, advanced vocational training and retraining, including practical work experience;
- (c) **employment and working conditions**, including dismissals and pay;
- (d) membership of and involvement in an **organisation of workers or employers**, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;
- (e) social protection, including **social security and healthcare**;
- (f) **social advantages**;
- (g) **education**;
- (h) **access to and supply of goods and services** which are available to the public, including **housing**.

Only equality directive to cover education

- Harassment on racial/ethnic ground in education frequent ground of complaint

C-457/17 Maniero

- Recital 12 RED: "To **ensure the development of democratic and tolerant societies which allow the participation of all persons** irrespective of racial or ethnic origin"

- Notion of education **not to be interpreted restrictively**.

- **Scholarships covered** if **sufficiently close connection between scholarship and the participation in education**, in particular if **intended to remove economic obstacles** for participation and suitable to attain this aim



Case-law of ECtHR on discrimination in education

Placement of Roma children in special school for the mentally disabled

D.H. and others v the Czech Republic (13.11.07)

Horváth and Kiss v Hungary (29.1.13)

Segregation in Roma-only classes

Orsus and others v Croatia (16.3.10)

Sampanis and others v Greece (5.6.08)

Sampani and others v Greece (11.12.12)

Lavida and others v Greece (28.5.13)

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Supply of services

C-83/14 CHEZ

- *Scope cannot be interpreted restrictively*

- **Supply of electricity is clearly covered** by Article 3(1)(h) of Directive 2000/43

- Also the **installation at the final consumer's property of an electricity meter**, which constitutes an **adjunct inextricably linked to that supply**, falls within the scope of the directive and is subject to observance of the principle of equal treatment

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BUT C-391/09 Runevic-Vardyn

- *Scope cannot be applied restrictively, but there are limits...*
 - *National provisions for **transcription of names not covered** – not a supply of services*
 - *EP wanted to amend the RED proposal and include “the exercise by any public body, including police, immigration, criminal and civil justice authorities, of its functions”
Council said no!*
 - **Exercise of public authority not covered**

The Directive also does not cover

- *Provisions/conditions on **entry/residence of 3rd State nationals** and stateless on the national territory*

*Indirect discrimination accepted if **justified** by a legitimate aim, appropriate and necessary – not direct discrimination*

Genuine and determining occupational requirements OK

Positive action to prevent or compensate for disadvantages linked to racial or ethnic origin

May **not be used to justify regression** in the protection already offered in the Member State

Main features

- *Principle of equal treatment*
- *Legal and/or administrative remedies*
- *Sanctions: dissuasive, proportionate -> real and effective compensation*
- *Equality bodies' and other organisations' right to engage in support or on behalf of a complainant*
- *Burden of proof*

Equality body

Obligation under this and several other Directives to designate an equality body

Commission's Recommendation of 22 June 2018 on Standards on equality bodies

De facto infringements

Infringements can occur

- by legislation*
- by government/regional provisions*
- by court judgments if they have a "precedent" effect*
- by de facto situations caused even by independent institutions*

C-154/08 Commission v Spain, Case C-129/00 Commission v Italy (inter alia)



Thank you for your attention!

Justice and
Consumers

