



Racial Discrimination in Community legislation

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Dick Houtzager, Art.1
the Netherlands

Racial discrimination in Community legislation



- Introduction
- Racial discrimination: concept
- Racial discrimination: EU framework
- Case law ECJ: Feryn case

Racial discrimination: concept

- 'Race': no acceptance of theories of existence of different human races
- Race discrimination under ICERD: 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life'.

Racial discrimination: concept

ECHR: Art. 14 and Protocol 12 European Convention on Human Rights

Judgments on racial discrimination:

- Nachova v. Bulgaria (43577/98 and 43579/98, ECHR 2005)
- Timishev v. Russia (55762/00 and 55974/00, ECHR 2006)

[...]



voorkomt en bestrijdt
discriminatie

Racial discrimination: concept

- D.H. and others v. Czech Republic (57325/00, ECHR 2008):

“The Court has also held that no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.”

Racial discrimination: concept

ECHR:

“Racial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment.”

Racial discrimination: Community framework



Article 13 EC Treaty

Racial Equality Directive 2000/43/EC

Scope of the Directive:

Employment and related areas, plus:

- Social protection, including social security, healthcare
- Social advantages
- Education
- Access to goods and services, including housing

Racial discrimination: Community framework



Difference with Framework Employment Directive 2000/78/EC:

- Grounds: religion or belief, disability, age or sexual orientation.
- Scope: employment and related areas.

Racial discrimination: case law ECJ

One case relating to race:

Centrum voor gelijkheid van kansen en voor
racismebestrijding v. Firma Feryn NV
Case no. C-54/07, 10 July 2008 ('Feryn')

Issues:

- Employment
- Identifiable complainant/statements about recruitment policy
- Burden of proof
- Sanctions

Racial discrimination: Feryn case

No identifiable complainant/statements about recruitment policy

ECJ refers to purpose of Directive 'to foster conditions for a socially inclusive labour market'. Public statements as in Feryn will strongly dissuade certain candidates to apply.

Direct discrimination - not dependant on an identifiable complainant.

Associations with a legitimate interest may start a legal case, in accordance with national legislation.

Racial discrimination: Feryn case

Burden of proof

Statements such as made by Feryn may constitute facts from which a presumption of discrimination arises.

The employer is required to prove that there was no discriminatory recruitment policy.

E.g. by showing that the actual recruitment practice does not correspond with those statements.

Racial discrimination: Feryn case

Sanctions

Art. 15 Directive: sanctions must be effective, proportionate and dissuasive.

ECJ: Sanctions may entail

- an adequate level of publicity, at the cost of the defendant,
- a prohibitory injunction, ordering the employer to cease the discriminatory practice,
- a fine,
- the award of damages to the body bringing the proceedings.

Racial discrimination: Feryn case

- Conclusion

Wide interpretation of the Directive: protection against discrimination for persons that are no victim as such.

Enforcement: Member States have the right to allow associations to bring legal proceedings – certain amount of national discretion.