

Reference for a preliminary ruling from the Komisia za zashtita ot diskriminatsia (Bulgaria) lodged on 25 July 2011 — Valeri Hariev Belov v ChEZ Elektro Balcaria AD and ChEZ Raspredelenie Balcaria AD

(Case C-394/11)

(2011/C 298/27)

Language of the case: Bulgarian

Referring court

Komisija za zashtita ot diskriminatsia

Parties to the main proceedings

Applicant: Valeri Hariev Belov

Defendants: ChEZ Elektro Balcaria AD, ChEZ Raspredelenie Balcaria AD and Darzhavna Komisija po energiyno i vodno regulirane

Questions referred

Question 1: Does the case to be considered fall within the scope of Council Directive 2000/43/EC ⁽¹⁾ of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (here with respect to Article 3(1)(h))?

Question 2: What is meant by ‘treated less favourably’ within the meaning of Article 2(2)(a) of Directive 2000/43 and by ‘put persons of a racial or ethnic origin at a particular disadvantage’ within the meaning of Article 2(2)(b) of Directive 2000/43?

2.1. For less favourable treatment to qualify as direct discrimination, is it absolutely essential for the treatment to be more unfavourable and for it to infringe, directly or indirectly, rights or interests explicitly defined in law, or is it to be understood as any form of behaviour (relationship) in the wider sense of the word which is less advantageous than behaviour in a similar situation?

2.2. For the fact of being put in a particular unfavourable situation to qualify as indirect discrimination, is it also necessary for it to infringe, directly or indirectly, rights or interests explicitly defined in law, or is it to be understood in the wider sense as any form of being placed in a particular unfavourable/disadvantageous situation?

Question 3: Depending on the answer to the second question: If, for direct or indirect discrimination within the meaning of Article 2(2)(a) and (b) of Directive 2000/43 to be deemed to have occurred, it is necessary for the less favourable treatment or the fact of being put in a particular unfavourable situation to infringe, directly or indirectly, a right or interest defined in law,

3.1. do the provisions of Article 38 of the Charter of Fundamental Rights of the European Union, Directive

2006/32/EC ⁽²⁾ (Recital 29, Article 1 and Article 13(1)), Directive 2003/54/EC ⁽³⁾ (Article 3(5)) and Directive 2009/72/EC ⁽⁴⁾ (Article 3(7)) define, to the benefit of the final consumer of electricity, a right or interest entitling him to check meter readings regularly and capable of being relied on before the national courts in proceedings such as the main proceedings,

and

3.2. is national legislation and/or administrative practice approved by the State energy regulatory authority granting a distribution undertaking the freedom to install electricity meters in places to which it is difficult or impossible to gain access, preventing consumers from checking and monitoring meter readings, compatible with those provisions?

Question 4: Depending on the answer to the second question: If, for direct or indirect discrimination to be deemed to have occurred, it is not absolutely necessary for a right or interest defined in law to have been directly or indirectly infringed,

— is, pursuant to Article 2(2)(a) and (b) of Directive 2000/43, national legislation or case-law, as at issue in the main proceedings, admissible if it requires, for discrimination to be deemed to have occurred, that the more unfavourable treatment and the fact of being put in a more unfavourable position infringe, directly or indirectly, rights or interests defined in law;

— if they are not admissible, is the national court then obliged not to apply them and to refer to the definitions given in the directive?

Question 5: Is Article 8(1) of Directive 2000/43 to be interpreted

5.1. as meaning that it requires the victim to establish facts which impose an unambiguous, incontestable and certain conclusion or inference that direct or indirect discrimination has occurred, or is it sufficient for the facts to justify only an assumption/presumption of such discrimination?

5.2. Do the facts that

(a) only in the two parts of the city known as Roma districts are electricity meters attached to electricity poles in the streets at a height at which consumers cannot read them, with known exceptions in some parts of those two urban districts, and

(b) in all other districts of the city the electricity meters are placed at a different height (up to 1.7 m) at which they can be read, usually in the consumer's home, on the outside of the building or on surrounding fences,

lead to a shift in the burden of proof to the defendant?

5.3. Do the facts that

- (a) not only Roma but also people of a different ethnic origin live in the two parts of the city known as Roma districts and/or
- (b) accordingly, not all the inhabitants of those two districts actually regard themselves as Roma, and/or
- (c) the reasons for placing the electricity meters in those two urban districts at a height of 7 m are described by the distribution undertaking as being generally known,

preclude a shift in the burden of proof to the defendant?

Question 6: Depending on the answer to Question 5:

6.1. If Article 8(1) of Directive 2000/43 is to be interpreted as meaning that an assumption/presumption of the occurrence of discrimination is necessary and if the aforementioned facts lead to a shift in the burden of proof to the defendant, what form of discrimination can be presumed from those facts — direct or indirect discrimination and/or harassment?

6.2. Do the provisions of Directive 2000/43 enable direct discrimination and/or harassment to be justified by the pursuit of a legal objective by necessary and suitable means?

6.3. In view of the legal objectives which the distribution undertaking emphasises it is pursuing, can the measure taken in the two urban districts be justified in a situation in which

- (a) the measure is taken because of the increasing incidence of unpaid bills in the two urban districts and the frequent offences committed by consumers which impair or threaten the safety, quality and continuous and secure operation of the electrical installations

and

the measure is taken across the board, irrespective of whether the individual consumer pays his bills for the distribution and supply of electricity and whether the individual consumer has been found to have committed any offence (manipulation of meter readings, illegal connection and/or extraction and/or consumption of electricity without payment, or any other interference with the network which impairs or threatens its safe, high-quality, continuous and secure operation);

- (b) provision is made in legislation and the General Conditions of the Contract on Distribution ('Distribution Contract') for liability for any similar offence in civil, administrative and criminal law;
- (c) the clause contained in Article 27(2) of the General Conditions of the Distribution Contract — whereby the distribution undertaking gives an assurance that, if explicitly requested by a consumer in writing, it

will enable him to make a visual check of the meter readings — does not in fact enable the consumer to check the readings personally and regularly;

- (d) it is possible for an inspection meter to be installed in the consumer's home at his explicit written request, although a fee is payable;
- (e) the measure is a distinctive and visible reference to the dishonesty of the consumer in one or other form in view of what the distribution undertaking refers to as the generally known reasons for the measure being taken;
- (f) other technical methods and means can be used to protect electricity meters against interference;
- (g) the legal representative of the distribution undertaking claims that a similar measure taken in a Roma district of another city was in fact unable to prevent interference;
- (h) it is not assumed that an electrical installation in one of these urban districts, a transformer station, will need to undergo measures similar to those taken to protect electricity meters?

⁽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).

⁽²⁾ Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC (Text with EEA relevance) (OJ 2006 L 114, p. 64).

⁽³⁾ Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC — Statements made with regard to decommissioning and waste management activities (OJ 2003 L 176, p. 37).

⁽⁴⁾ Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (Text with EEA relevance) (OJ 2009 L 211, p. 55).

Appeal brought on 29 July 2011 by Elf Aquitaine SA against the judgment delivered by the General Court (Second Chamber) on 17 May 2011 in Case T-299/08 Elf Aquitaine v Commission

(Case C-404/11 P)

(2011/C 298/28)

Language of the case: French

Parties

Appellant: Elf Aquitaine SA (represented by: E. Morgan de Rivery and E. Lagathu, avocats)

Other party to the proceedings: European Commission