

Operative part of the judgment

The Court:

- 1) Sets aside the judgment of the General Court of the European Union in *Rusal Armenal v Council* (T-512/09, EU:T:2013:571);
- 2) Refers the case back to the General Court of the European Union for it to rule on the pleas in law on which it did not adjudicate;
- 3) Reserves the costs.

⁽¹⁾ OJ C 61, 1.3.2014.

Judgment of the Court (Grand Chamber) of 16 July 2015 (request for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria) — CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia

(Case C-83/14) ⁽¹⁾

(Directive 2000/43/EC — Principle of equal treatment between persons irrespective of racial or ethnic origin — Urban districts lived in mainly by persons of Roma origin — Placing of electricity meters on pylons forming part of the overhead electricity supply network, at a height of between six and seven metres — Concepts of ‘direct discrimination’ and ‘indirect discrimination’ — Burden of proof — Possible justification — Prevention of tampering with electricity meters and of unlawful connections — Proportionality — Widespread nature of the measure — Offensive and stigmatising effect of the measure — Directives 2006/32/EC and 2009/72/EC — Inability of final consumers to monitor their electricity consumption)

(2015/C 311/09)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Appellant: CHEZ Razpredelenie Bulgaria AD

Respondent: Komisia za zashtita ot diskriminatsia

Third parties: Anelia Nikolova, Darzhavna Komisia za energiyno i vodno regulirane

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1. The concept of ‘discrimination on the grounds of ethnic origin’, for the purpose of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and, in particular, of Articles 1 and 2(1) thereof, must be interpreted as being intended to apply in circumstances such as those at issue before the referring court — 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.

2. Directive 2000/43, in particular Article 2(1) and (2)(a) and (b) thereof, must be interpreted as precluding a national provision which lays down that, in order to be able to conclude that there is direct or indirect discrimination on the grounds of racial or ethnic origin in the areas covered by Article 3(1) of the directive, the less favourable treatment or the particular disadvantage to which Article 2(2)(a) and (b) respectively refer must consist in prejudice to rights or legitimate interests.
3. Article 2(2)(a) of Directive 2000/43 must be interpreted as meaning that a measure such as that described in paragraph 1 of this operative part constitutes direct discrimination within the meaning of that provision if that measure proves to have been introduced and/or maintained for reasons relating to the ethnic origin common to most of the inhabitants of the district concerned, a matter which is for the referring court to determine by taking account of all the relevant circumstances of the case and of the rules relating to the reversal of the burden of proof that are envisaged in Article 8(1) of the directive.
4. Article 2(2)(b) of Directive 2000/43 must be interpreted as meaning that:
 - that provision precludes a national provision according to which, in order for there to be indirect discrimination on the grounds of racial or ethnic origin, the particular disadvantage must have been brought about for reasons of racial or ethnic origin;
 - the concept of an ‘apparently neutral’ provision, criterion or practice as referred to in that provision means a provision, criterion or practice which is worded or applied, ostensibly, in a neutral manner, that is to say, having regard to factors different from and not equivalent to the protected characteristic;
 - the concept of ‘particular disadvantage’ within the meaning of that provision does not refer to serious, obvious or particularly significant cases of inequality, but denotes that it is particularly persons of a given racial or ethnic origin who are at a disadvantage because of the provision, criterion or practice at issue;
 - assuming that a measure, such as that described in paragraph 1 of this operative part, does not amount to direct discrimination within the meaning of Article 2(2)(a) of the directive, such a measure is then, in principle, liable to constitute an apparently neutral practice putting persons of a given ethnic origin at a particular disadvantage compared with other persons, within the meaning of Article 2(2)(b);
 - such a measure would be capable of being objectively justified by the intention to ensure the security of the electricity transmission network and the due recording of electricity consumption only if that measure did not go beyond what is appropriate and necessary to achieve those legitimate aims and the disadvantages caused were not disproportionate to the objectives thereby pursued. That is not so if it is found, a matter which is for the referring court to determine, either that other appropriate and less restrictive means enabling those aims to be achieved exist or, in the absence of such other means, that that measure prejudices excessively the legitimate interest of the final consumers of electricity inhabiting the district concerned, mainly lived in by inhabitants of Roma origin, in having access to the supply of electricity in conditions which are not of an offensive or stigmatising nature and which enable them to monitor their electricity consumption regularly.

(¹) OJ C 142, 12.5.2014.