



NEWS REPORT

Date: 8 September 2009
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Title: The ruling of the Labour Court in the Feryn case
Country: Belgium

Context

Issue at stake: Direct discrimination and burden of proof – Decision of the Labour Court after the preliminary ruling of the ECJ in the Feryn case

Ground of discrimination: Race/ethnic origin

Source: Labour Court, 28 August 2009

Field: Employment

Legislative provisions: Former Federal Anti-discrimination Act of 25 February 2003 and Federal Act of 30 July 1981 criminalising certain acts inspired by racism or xenophobia, transposing art. 2(2)(a), 8(1), 15 of Directive 2000/43/EC

Content

Case: A Flemish firm (Feryn NV) specialised in the sale and installation of up-and-over and sectional doors was seeking to recruit fitters to install up-and-over doors at its customers' houses. In 2005, in different newspapers and on Belgian national television, Mr. Pascal Feryn, one of the firm's directors, was reported to have said that his firm would not recruit persons of Moroccan origin for the reason that "*our customers don't want them*".

On 31 March 2006, The Centre for Equal Opportunities and Opposition to Racism (the federal Equality body) brought proceedings against the firm before the President of the Labour Tribunal of Brussels, claiming, *inter alia*, that the court should declare that Feryn had infringed the federal Act against discrimination transposing Directive 2000/43 into Belgian law (at the time, Act of 25 February 2003) and should order Feryn to end its discriminatory recruitment policy. However, the President of the Employment Tribunal held that the public statements in question did not constitute acts of discrimination; rather, they were mere evidence of potential discrimination, in that they indicated that persons of a certain ethnic origin would not be recruited by Feryn NV in the event they should decide to apply. For those reasons, the forms of order sought by the Centre were denied by order of 26 June 2006. The Centre brought an appeal against that order

before the Labour Court of Brussels which made a reference to the Court of Justice for a preliminary ruling (ECJ, 10 July 2008, *Centre for Equal Opportunities and Opposition to Racism v. Feryn*, case C-54/07, See Flash-reports 5 & 23).

Decision of the Court: On 28 August 2009, the Labour Court ruled that Mr. Feryn, by publicly declaring that his firm was not recruiting any employees of Moroccan origin, was directly discriminating. It ordered the cessation of the discriminatory practice and the publication of this judicial injunction in several newspapers.

Internet link source and additional information: press release of the Centre for Equal Opportunities and Opposition to Racism

(http://diversiteit.be/?setLanguage=2&action=artikel_detail&artikel=294)

The full text of the decision will shortly be translated in French and available in both national languages on the website of the Centre.