



NEWS REPORT

Date:	7 October 2014
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Title:	Application in Italy of the “Accept principle”
Country:	Italy
<u>Context</u>	
Issue at stake:	Discriminatory statement about hiring policy
Ground of discrimination:	Sexual orientation
Source:	Tribunal of Bergamo, 6 August 2014
Field:	Employment
Legislative provisions:	Lgs. decree 216/2003; Art. 28 of Lgs. Decree 150/2011; Directive 2000/78/EC

Content

Case: A well-known lawyer, Professor C. Taormina, made a public statement to a very popular broadcaster that he would not hire gays, that he would scrutinize deeply each new application to avoid any recruitment of gays. Moreover he said that the presence of gays in his office would have disturbed his law firm’s “environment”. The *Associazione avvocatura per i diritti LGBT - Rete Lenford* introduced a claim that Professor Taormina had violated the prohibition of direct discrimination.

Decision of the Court: The Tribunal upheld the request of the claimant and rejected the arguments of the defendant that at the moment of the interview no selection was in progress and that the contested statements had a joking character and were an expression of the defendant’s freedom of thought. The Tribunal quoted several paragraphs of the CJEU judgment in *Accept* (C-81/12), since the case at stake was very similar. In particular according to the Tribunal a direct discrimination may occur even when there is not an identifiable complainant who claims to have been victim of such discrimination. In addition discriminatory statements as those made by the defendant were likely to strongly dissuade certain candidates from submitting their candidature and, accordingly, to hinder their access to the labour market. Moreover the discriminatory effects of the statements were greater due to the defendant’s popularity. The Tribunal condemned him to the publication of the judgment in a newspaper with a state-wide coverage and to the payment of 10.000 Euros as compensation for damages and of 5.000 Euros as legal costs.

This judgment is the perfect transposition of the *Feryn – Accept* case law: similar the facts and identical the arguments of the court. Two points are worth mentioning: first of all this is a case of collective potential discrimination contested by an Association whose legal standing, according to Article 5, para. 2, of Legislative Decree 216/2003, was not contested; second the Court condemned the defendant to the payment of 10.000 Euros as a “dissuasive sanction”, according to Art. 28 of Legislative decree 150/2011 interpreted in line with Directive 2000/78/EC and with the *Accept* judgment (C-81/12): this is a private sanction, a sort of punitive damages since no damage had been suffered effectively by one or more identified victims. This sort of sanction is not



common in Italy: doctrine and jurisprudence have always asserted that they are contrary to general principles of civil liability. However an identical provision to the one applied in this judgment is laid down in Article 37, para. 3, of the “equal opportunity code” (legislative decree no. 198/2006): in case of collective discrimination the sanction may include the payment of non-pecuniary damages. These are not defined as punitive damages but they are paid to a collective body that has not suffered any damages indeed. The question of (punitive?) damages in case of collective discrimination is emerging from the case law thanks to a broad interpretation of the written rule: this approach has not been challenged so far but it is likely that the higher courts will be called to give their interpretation in the next future.

Internet link source and additional information:

<http://www.altalex.com/index.php?idnot=68849>