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NEWS REPORT

Country:	Bulgaria
Title:	CJEU Ruling Inaccessible electricity meters in Roma districts
Date:	30 July 2015
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<u>Context</u>	
Issue at stake:	Discrimination by association; Collective discrimination against Roma
Ground of discrimination:	Ethnic origin
Source:	CJEU Judgment in Case C-83/14 CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia
Field:	Access to goods and services
Applicable law:	Protection Against Discrimination Act, Articles 4, 9

Content

Case development: On 16 July 2015, CJEU gave a preliminary ruling in a case of alleged discrimination of a non-Roma woman who was denied access to her electricity meter, along with her Roma neighbours. Ms Nikolova runs a grocer's shop in a district inhabited mainly by Roma. In 1999 and 2000, CHEZ RB, an electricity distribution undertaking, installed the electricity meters for all the consumers of that district at an inaccessible height of 6-7m. In the non-Roma districts, the meters are placed at a height of 1.70m, available for monitoring by consumers. According to CHEZ RB, that difference in treatment is justified by frequent tampering with and damage to meters and by numerous unlawful connections to the network by the Roma. In December 2008, Ms Nikolova lodged a complaint with the Commission for Protection against Discrimination (the KZD), contending that the installation of the meters in an inaccessible location was due to the fact that mostly the inhabitants of the district were Roma. Although Ms Nikolova was not Roma herself, she considered that she too was suffering discrimination. The KZD found that Ms Nikolova had indeed been discriminated against compared with the customers whose meters were in accessible locations. CHEZ RB brought an appeal against that decision before the Sofia City Administrative Court. That court asked the Court of Justice whether the contested practice amounts to discrimination on grounds of ethnic origin.

Decision of the Court: CJEU held that the installation of electricity meters at an inaccessible height in a predominantly Roma district is liable to constitute discrimination on the grounds of ethnic origin when such meters are installed in other districts at a normal height. Even assuming that it is established that there has been abuse of the meters in that district, such a practice seems to be disproportionate to the dual objective of ensuring the security of the electricity transmission network and the due recording of electricity consumption.

CJEU held that the principle of equal treatment applies not only to persons who have a certain ethnic origin, but also to those who, although not themselves a member of the ethnic group concerned, suffer, together with the former, less favourable treatment or a particular disadvantage on account of a discriminatory measure. The presence in the district of inhabitants who are not Roma does not in itself rule out that the contested practice was imposed on account of the ethnic origin shared by most of the district's inhabitants (namely, Roma ethnic origin).

The evidence to be taken into consideration includes, in particular, the fact that the practice at issue has been established only in districts where Roma are the majority. Also, the fact that CHEZ RB has asserted before the KZD that the damage and unlawful connections are mainly due to Roma is capable of suggesting that the contested practice is based on ethnic stereotypes. The Bulgarian court will also have to take account of the compulsory, widespread and lasting nature of the practice. That practice affects without distinction all the inhabitants of the district, irrespective of whether their individual meters have been the subject of abuse and, if so, who has committed that abuse. Thus, the practice at issue may be perceived as suggesting that the inhabitants of that district are, as a whole, considered to be potential perpetrators of unlawful conduct. CJEU held that the practice amounts to unfavourable treatment of the inhabitants on account of both its offensive and stigmatising nature and the fact that it is next to impossible for them to check their electricity meters for the purpose of monitoring their consumption.

If the Bulgarian court were not to hold that the practice is directly discriminatory, that practice could, in principle, constitute indirect discrimination. Assuming that the practice has been carried out exclusively in order to respond to abuse committed in the district concerned, it would be based on apparently neutral criteria while affecting persons of Roma origin in considerably greater proportions. Thus, it gives rise to a disadvantage in particular for Roma compared to non-Roma. The protection of the security of the electricity transmission network and the due recording of electricity consumption are legitimate aims but it is necessary for CHEZ RB to prove that abuse has in fact been committed in respect of the electricity meters in the district concerned and that a risk of such abuse still remains. Furthermore, the Bulgarian court will have to examine whether other appropriate and less restrictive measures existed for resolving the problems encountered.

Even if no other measure as effective as the practice complained of exists for the purpose of achieving the aims, that practice seems to be disproportionate to those aims and to the legitimate interests of the inhabitants of the district, in the light in particular of the offensive and stigmatising nature of the practice and of the fact that it has, without distinction and for a very long time, denied the inhabitants of an entire district the possibility of monitoring their electricity consumption regularly.

Key points of analysis: The complainant was recognised as a victim of discrimination regardless of not being Roma herself. She suffered discrimination by association to her Roma neighbours.

The provider company needed to prove their allegations of tampering and other unlawful conduct invoked by them as a reason for the impugned treatment. However, their very allegations that Roma were responsible for such conduct amounted to an indication that the practice was racially-based. Furthermore, even if proven, such facts could not serve as a basis for treating all the inhabitants as potential offenders regardless of their individual history. The practice stigmatised all Roma as perpetrators and deprived them of a consumer right recognised under EU directives: the right to monitor and control their electricity consumption. The exercise of that right was blocked by the impugned practice. That, and its offensive nature, made the practice unjustifiable.

Internet link source:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=165912&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=329479>