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NEWS REPORT

Country:	Denmark
Title:	The meaning of ethnic origin
Date:	7 June 2017
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<u>Context</u>	
Issue at stake:	A preliminary ruling by the CJEU regarding the meaning of "ethnic origin" in the Race Directive. Requested by the Western High Court of Denmark
Ground of discrimination:	Ethnic origin
Source:	Court of Justice of the European Union, judgment delivered on 6 April 2017 in Case C-668/15
Field:	Goods and services
Applicable law:	Section 3 of the Act on Ethnic Equal Treatment. Article 1 of the Race Directive (2000/43)

Content

Case: Mr. Ismar Husic was born in Bosnia and Herzegovina in 1975 and had lived in Denmark since 1993. He acquired Danish nationality in 2000. Mr. Husic and his partner applied for a loan to purchase a used car. For the purpose of processing the loan application, the car dealer emailed the names, the address, national identity numbers and copies of the applicants' driving licenses to the credit institution, Jyske Finans. The driver's license of Mr. Husic indicated that he was born in Bosnia and Herzegovina but it did not state his nationality. In accordance with internal procedural rules, Jyske Finans requested additional proof of Mr. Husic's identity in the form of a copy of his passport or residence permit. Mr. Husic's partner, who according to the information on her driver's license was born in Denmark, was not required to provide such additional proof.

Mr. Husic found the practice to be discriminatory. The Board of Equal Treatment ruled that Jyske Finans' procedural rules constituted indirect discrimination based on ethnic origin. The case was taken to the civil courts, and the city court of Viborg concluded that the rules amounted to direct discrimination. The ruling was appealed to the Western High Court, which requested a preliminary ruling from the CJEU regarding the meaning of direct and indirect discrimination because of ethnic origin. The CJEU was asked whether credit institutions were allowed to request different documentation from loan applicants depending on whether they were born in a European Union/EFTA country or not.

The decision of the CJEU: The Court rejected the point of view that a person's country of birth should be regarded as directly linked to his or her specific ethnic origin. Ethnic origin cannot be determined on the basis of a single criterion like a country of birth but, on the contrary, is based on a whole number of factors like common nationality, religious faith, language, cultural and traditional origins and backgrounds. Thus, the Court argued that a person's country of birth cannot in itself justify a general presumption that that person is a member of a given ethnic group. Furthermore, according to the Court, it

cannot be presumed that each sovereign State has one, and only one, ethnic origin. Moreover, the directive specifically does not cover differential treatment on grounds of nationality. Thus, the Court concluded that Mr. Husic was not subjected to direct discrimination based on his ethnic origin.

Secondly, the Court argued that the concept of indirect discrimination is only applicable if the allegedly discriminatory measure has the effect of placing a person of a particular ethnic origin at a disadvantage. According to the Court, it is necessary to carry out a specific concrete comparison – a general abstract comparison of advantage/disadvantage is not sufficient. The Court did not agree that the use of a neutral criterion, namely a person's country of birth, was generally more likely to affect persons of a "given ethnicity" than "other persons". Thus the Court concluded that indirect discrimination of Mr. Husic based on his ethnic origin had not taken place.

In conclusion, the Court stated that the practice of requesting additional proof of identity for individuals born outside EU or EFTA was neither directly nor indirectly connected with the ethnic origin of the person applying for a loan. Thus the practice could not be said to constitute direct or indirect discrimination based on ethnic origin within the meaning of the Racial Equality Directive.

Key points of analysis: The judgment illustrates that ethnic origin cannot be determined on the basis of a single criterion. It is based on a number of objective and subjective factors. The birthplace of a person is only one of several factors determining the ethnic origin of the person. In other words, the birthplace of a person cannot by itself create a general presumption for a particular ethnic origin.

Internet link source: <http://curia.europa.eu/juris/liste.jsf?num=C-668/15>.