



European network of legal experts in gender equality and non-discrimination

FLASH REPORT

Country:	Belgium
Title:	Reinforcing the protection of witnesses of discrimination
Date:	9 July 2019
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<u>Context</u>	
Issue at stake:	Protection against retaliation for witness of discrimination based on sex
Grounds of discrimination:	All grounds
Field of application:	All fields
Source:	CJEU
Applicable law:	Directive 2006/54/EC and Gender Equality act of 10 May 2007

Content

Case: A woman (Ms Hakelbracht) applied for a fixed part-time position in the local branch of a clothes chain store company. The branch manager (Ms Vandebon) found her to be the most suitable candidate for the job, regardless of her being three months pregnant. Therefore, she informed the human resources manager of the company of her intention to hire Ms Hakelbracht. However, the human resources manager informed Ms Vandebon that the company was not in favour of this candidate because of her pregnancy.

Ms Vandebon informed therefore Ms Hakelbracht that the company didn't want to hire her because of her pregnancy. Ms Hakelbracht filed a complaint for discrimination on the ground of sex with the Institute of Equality for Women and Men (the gender equality body).

A few months after the complaint was introduced by Ms Hakelbracht, Ms Vandebon was dismissed by her employer on the grounds of mismanagement issues. The trade union of which Ms Vandebon was a member challenged those grounds.

The Labour Court in Antwerp considered that Ms Hakelbracht was a victim of direct discrimination on grounds of sex. As to Ms Vandebon, she relied on the protection against retaliation¹ guaranteed by Article 22 (9) of the Gender Act as she was a witness in the investigation of the complaint lodged by Ms Hakelbracht. However, the Labour Court noted that the requirements of the Gender Act were not met: Ms Vandebon could not produce any dated and signed document relating to her witness's statement.

Decision of the court: The Labour Court referred for a preliminary ruling to the European Court of justice regarding the compatibility with Article 24 of Directive 2006/54 of the restrictive protection of witnesses (only to persons who report the facts in a signed and dated document) under the Gender Act. The Court of Justice, in its decision on Case C-404/18 of 20 June 2019 stated that, indeed, Article 24 of Directive 2006/54 must be

¹ 'Protection against retaliation' is equal to the concept 'protection against victimisation' used in EU Law.

interpreted as meaning that it precludes a legislation, such as the Belgian Gender Act, to protect an employee “who has supported a person who believed to be discriminated against on ground of sex, solely if that employee has intervened as a witness in the context of the investigation of that complaint and that the employee’s witness statement satisfies formal requirements laid down by that legislation”.

Key points of analysis: The decision of the CJEU regarding the protection of witnesses was eagerly expected as the current Belgian legislation has been reported by independent experts² as not complying with EU Law because it provides for a too formalistic approach of protection of witnesses (only to persons who report the facts in a signed and dated document).

The issue related to the interpretation of the protection of witnesses of discrimination is in fact broader than the field of discrimination relating to sex and gender. The other two anti-discrimination Act of 10 May 2007, the ‘Race Act’ and the ‘General Act’, which implement Directives 2000/43/EC and 2000/78/EC respectively, both contain the same provision relating to the protection against retaliation to persons who act as witnesses of discrimination. Obviously all three Acts will have to be amended accordingly.

Internet link source: See: <http://curia.europa.eu>.

² For example, see Commission for Assessment of the federal legislation aiming at fighting discrimination, first evaluation report, February 2017. Accessible in French and Dutch on the website of UNIA; https://www.unia.be/files/Documenten/Aanbevelingen-advies/Commission_dévaluation_de_la_législation_fédérale_relative_à_la_lutte_contre_les_discriminations.pdf.