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Provisional text

## JUDGMENT OF THE COURT (First Chamber)

6 April 2017 (\*)

(Reference for a preliminary ruling — Equal treatment between persons irrespective of racial or ethnic origin — Directive 2000/43/EC — Article 2(2)(a) and (b) — Credit institution requiring persons applying for a loan to purchase a car who have produced a driving licence indicating a country of birth other than a Member State of the European Union or of the European Free Trade Association as a form of identification to provide additional proof of identity in the form of a copy of a passport or residence permit)

In Case C-668/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Vestre Landsret (High Court of Western Denmark), made by decision of 17 November 2015, received at the Court on 14 December 2015, in the proceedings

**Jyske Finans A/S**

v

**Ligebehandlingsnævnet**, acting on behalf of Ismar Huskic,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, E. Regan, A. Arabadjiev (Rapporteur), C.G. Fernlund and S. Rodin, Judges,

Advocate General: N. Wahl,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 12 October 2016,

after considering the observations submitted on behalf of:

- Jyske Finans A/S, by C. Led-Jensen, advokat,
- the Danish Government, by C. Thorning, acting as Agent, and R. Holdgaard, advokat,
- the European Commission, by D. Martin and, initially, M. Clausen, and, subsequently, L. Grønfeldt, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 1 December 2016.

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(2)(a) and (b) of Council Directive 2002/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22) and Article 13 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ 2005 L 309, p. 15).
- 2 The request has been made in proceedings between Jyske Finans A/S and the Ligebehandlingsnævnet (Equal Treatment Board, Denmark), acting on behalf of Mr Ismar Huskic, concerning the legality of the internal procedure of that company consisting in requiring persons applying for a loan to purchase a car who have produced a driving licence indicating a country of birth other than a Member State of the European Union or of the European Free Trade Association (EFTA) as a form of identification to provide additional proof of identity, in the form of a copy of a passport or residence permit.

### **Legal context**

#### *European Union law*

- 3 Recital 8 of Directive 2000/43 states that ‘the Employment Guidelines 2000 agreed by the European Council in Helsinki, on 10 and 11 December 1999, stress the need to foster conditions for a socially inclusive labour market by formulating a coherent

set of policies aimed at combating discrimination against groups such as ethnic minorities’.

4 Recital 13 of Directive 2000/43 states that ‘any direct or indirect discrimination based on racial or ethnic origin as regards the areas covered by this Directive should be prohibited throughout the [European Union]. This prohibition of discrimination should also apply to nationals of third countries, but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and to occupation’.

5 Article 1 of Directive 2000/43 provides that ‘the purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment’.

6 Article 2 of that directive states as follows:

‘1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

...’

7 Article 3(2) of Directive 2000/43 provides that the directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

*Danish law*

8 As is apparent from the order for reference, Directive 2000/43 was transposed into Danish law by the lov om etnisk ligebehandling (Law on equal treatment on grounds of ethnic origin), Article 3 of which is worded as follows:

‘1 No person may, either directly or indirectly, treat another person differently on the grounds of the racial or ethnic origin of the person concerned or of a third person.

2 Direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin.

3. Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice may result in persons of a given racial or ethnic origin being treated less favourably than other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

...’

#### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

9 Mr Huskic, who was born in Bosnia and Herzegovina in 1975 and has lived in Denmark since 1993, acquired Danish nationality in 2000. Mr Huskic and his partner, a Danish citizen born in Denmark, purchased a second-hand car from a car dealership. The purchase of the vehicle was partly financed by a loan granted by Jyske Finans, a credit institution specialising in the financing of motor vehicles.

10 For the purpose of processing the loan application, the dealership emailed the names, address, national identity numbers and copies of the applicants’ Danish driving licences to Jyske Finans. The driving licences do not state the holder’s nationality. Having established that, according to the information on Mr Huskic’s driving licence, he was born in Bosnia and Herzegovina, Jyske Finans requested, in accordance with its internal procedural rules, additional proof of Mr Huskic’s identity in the form of a copy of his passport or residence permit. Mr Huskic’s partner, who, according to the information on her driving licence, was born in Denmark, was not required to provide such additional proof.

11 Mr Huskic was of the view that Jyske Finans’ request was discriminatory and referred the matter to the Equal Treatment Board, which awarded him compensation on grounds of indirect discrimination. The Retten i Viborg (District Court, Viborg, Denmark) upheld that decision, while at the same time expressing the view that Mr Huskic’s treatment amounted to direct discrimination.

- 12 Jyske Finans contends that it was required to bring the action in the main proceedings in view of its obligations under the rules on the prevention of money laundering.
- 13 It is in those circumstances that the Vestre Landsret (High Court of Western Denmark), before which Jyske Finans brought an action, decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Must the prohibition on direct discrimination on grounds of ethnic origin in Article 2(2)(a) of [Directive 2000/43] be interpreted as precluding a practice such as the one in the present case, by which persons born outside the Nordic countries, a Member State, Switzerland or Liechtenstein are treated less favourably than persons in an equivalent situation born in the Nordic countries, a Member State, Switzerland or Liechtenstein?
- (2) If the first question is answered in the negative, does such a practice then give rise to indirect discrimination on grounds of ethnic origin within the meaning of Article 2(2)(b) of [Directive 2000/43] — unless it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary?
- (3) If the second question is answered in the affirmative, can such a practice in principle be justified as an appropriate and necessary means of safeguarding the enhanced customer due diligence measures provided in Article 13 of [Directive 2005/60]?’

### **Findings of the Court**

#### *The first and second questions*

- 14 By its first and second questions, which it is appropriate to consider together, the referring court seeks to ascertain, in essence, whether Article 2(2)(a) and (b) of Directive 2000/43 is to be interpreted as precluding the practice of a credit institution which requires a customer whose driving licence indicates a country of birth other than a Member State of the European Union or the EFTA to produce additional identification in the form of a copy of the customer’s passport or residence permit.
- 15 For the purpose of answering those questions, it is necessary to establish whether a practice such as that at issue in the main proceedings introduces a difference in treatment based on ethnic origin within the meaning of Article 2 of Directive 2000/43. It should be recalled in that regard that that article states that the principle of equal treatment means that there is to be no direct or indirect discrimination on either of the grounds referred to in Article 1 of the directive. Article 2(2)(a) of the directive provides that, for the purposes of the application of Article 2(1), direct discrimination is taken to occur where one person is treated less favourably than

another person in a comparable situation, on grounds of racial or ethnic origin. Moreover, Article 2(2)(b) of Directive 2000/43 provides that, for the purposes of the directive, indirect discrimination is to be taken to occur where an apparently neutral provision, criterion or practice would put persons of a given racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

- 16 With regard, in the first place, to whether the practice at issue in the main proceedings constitutes different treatment directly based on ethnic origin within the meaning of Article 1 of Directive 2000/43, it is necessary to examine whether, in a case such as that in the main proceedings, a person's country of birth is to be regarded as directly or inextricably linked to his specific ethnic origin.
- 17 It should be noted in that regard that the concept of 'ethnicity' has its origin in the idea of societal groups marked in particular by common nationality, religious faith, language, cultural and traditional origins and backgrounds (judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480, paragraph 46).
- 18 While a person's country of birth does not appear on that list of criteria, it should be noted that, as the list begins with the words 'in particular', it is not exhaustive and it cannot therefore be ruled out that a person's country of birth might be included among those criteria. However, even if that were the case, it is clear that it is only one of the specific factors which may justify the conclusion that a person is a member of an ethnic group and is not decisive in that regard.
- 19 Ethnic origin cannot be determined on the basis of a single criterion but, on the contrary, is based on a whole number of factors, some objective and others subjective. Moreover, it is not disputed that a country of birth cannot, in general and absolute terms, act as a substitute for all the criteria set out in paragraph 17 above.
- 20 As a consequence, a person's country of birth cannot, in itself, justify a general presumption that that person is a member of a given ethnic group such as to establish the existence of a direct or inextricable link between those two concepts.
- 21 Furthermore, it cannot be presumed that each sovereign State has one, and only one, ethnic origin.
- 22 In the dispute in the main proceedings, Mr Huskic's country of birth is the only criterion on the basis of which, first, the Equal Treatment Board and then the Retten i Viborg (District Court, Viborg) found that the practice at issue constituted discrimination on grounds of ethnic origin.

- 23 It cannot therefore be concluded that, even if it were possible to classify it as ‘unfavourable treatment’, the requirement to provide the additional identification requested in the main proceedings is directly based on ethnic origin.
- 24 Moreover, as is apparent from recital 13 and Article 3(3) of Directive 2000/43, the directive does not cover different treatment on grounds of nationality.
- 25 It follows that a practice such as that at issue in the main proceedings, which requires a customer whose driving licence indicates a country of birth other than a Member State of the European Union or the EFTA to produce additional identification in the form of a copy of the customer’s passport or residence permit, does not mean that the person concerned is subject to different treatment that is directly based on his ethnic origin.
- 26 With regard, in the second place, to whether such a practice constitutes indirect discrimination based on ethnic origin, it is necessary to determine whether, in the light of Article 2(2)(b) of Directive 2000/43, that practice, although on the face of it neutral, would put persons of a given racial or ethnic origin at a particular disadvantage compared with other persons.
- 27 The words ‘particular disadvantage’ used in that provision must be understood as meaning that it is particularly persons of a given ethnic origin who are at a disadvantage because of the measure at issue (judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480, paragraph 100).
- 28 In that connection, it was argued before the Court that, whatever the ‘less favourably’ treated ethnic origin of Mr Huskic, persons of ‘Danish ethnicity’ will be treated more favourably as a result of the practice at issue in the main proceedings as they are not subject to the requirement in question.
- 29 However, it is sufficient to note that that requirement is applicable without distinction to all persons born outside the territory of a Member State of the European Union or the EFTA.
- 30 It should also be noted that indirect discrimination is liable to arise when a national measure, albeit formulated in neutral terms, works to the disadvantage of far more persons possessing the protected characteristic than persons not possessing it (judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480, paragraph 101).
- 31 Nonetheless, as observed in paragraph 27 above, the concept of ‘indirect discrimination’ within the meaning of Article 2(2)(b) of Directive 2000/43 is applicable only if the allegedly discriminatory measure has the effect of placing a person of a particular ethnic origin at a disadvantage.

- 32 As the Advocate General observed in point 64 of his Opinion, for the purposes of ascertaining whether a person has been subject to unfavourable treatment, it is necessary to carry out, not a general abstract comparison, but a specific concrete comparison, in the light of the favourable treatment in question.
- 33 It follows that the argument that the use of the neutral criterion at issue in the main proceedings, namely a person's country of birth, is generally more likely to affect persons of a 'given ethnicity' than 'other persons' cannot be accepted.
- 34 The same applies to the argument that the use of that criterion would place at a disadvantage persons whose ethnic origin is that of a country other than a Member State of the European Union or the EFTA. Reference should also be made to paragraphs 18 and 21 above, from which it is apparent that ethnic origin cannot generally be presumed on the sole basis of a person's country of birth.
- 35 It follows that a practice such as that at issue in the main proceedings does not give rise, for the person concerned, to different treatment indirectly based on ethnic origin.
- 36 Accordingly, the Court finds that that practice is based on a criterion that it neither directly nor indirectly connected with the ethnic origin of the person concerned. That practice cannot therefore be said to give rise to different treatment on grounds of ethnic origin within the meaning of Article 1, in conjunction with Article 2(2)(a) and (b), of Directive 2000/43.
- 37 In the light of the foregoing considerations, the answer to the first and second questions is that Article 2(2)(a) and (b) of Directive 2000/43 is to be interpreted as not precluding the practice of a credit institution which requires a customer whose driving licence indicates a country of birth other than a Member State of the European Union or the EFTA to produce additional identification in the form of a copy of the customer's passport or residence permit.

*The third question*

- 38 In view of the answer given to the first and second questions, there is no need to answer the third question.

**Costs**

- 39 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:



**Article 2(2)(a) and (b) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin is to be interpreted as not precluding the practice of a credit institution which requires a customer whose driving licence indicates a country of birth other than a Member State of the European Union or of the European Free Trade Association to produce additional identification in the form of a copy of the customer's passport or residence permit.**

[Signatures]

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\* Language of the case: Danish.

