

EU Ruling Extends Discrimination Law

THE WALL STREET JOURNAL

By CHARLES FORELLE

July 11, 2008; Page A6

BRUSSELS -- Europe's highest court ruled that a Belgian garage-door installer broke the European Union's antidiscrimination laws by stating publicly that he wouldn't hire Moroccans, even though there was no evidence any job applicant had actually been rejected.

The decision expands the scope of EU discrimination laws, raises questions of free speech, and highlights a tension between the bloc and its constituent countries over how much sway Brussels should have in domestic labor-market affairs.

A Belgian court originally found that the statements -- made in newspaper and television interviews -- might be unsavory but didn't necessarily amount to discrimination since no injured party could be found. The British and Irish governments joined the case with similar arguments.

The European Court of Justice rejected those views, saying EU countries must provide for "effective, proportionate and dissuasive" sanctions -- including, possibly, injunctions and fines -- against employers who make sweeping statements viewed as discriminatory.

"It may have a very big impact on the attitude of employers," says Olivier Rijckaert, an employment lawyer at Field Fisher Waterhouse LLP in Brussels. Statements such as "we want to hire young people," or "we prefer women" are now suspect, he says.

The case concerned a small garage-door installation company near Antwerp, Firma Feryn NV, that was hiring. The newspaper De Standaard quoted company director Pascal Feryn saying "we aren't looking for Moroccans. Our customers don't want them." He expanded on his views in an evening television broadcast, saying, "People often say: 'no immigrants'...I must comply with my customers' requirements." He added: "I'm not a racist. Belgians break into people's houses just as much. But people are obviously scared."

Mr. Feryn couldn't be reached for comment.

A Belgian civil-rights group, the Center for Equal Opportunities and Opposition to Racism, or CGKR by its Dutch abbreviation, sued Feryn unsuccessfully in Belgian court; on appeal the question was referred to the Court of Justice.

A 2000 EU directive mandated that national governments enact antidiscrimination laws. But at issue before the court was what sort of scope those laws need to have. Thursday's ruling makes clear that they need to cover employment. Until now, "the antidiscrimination cases heard by the European Court of Justice have always concerned a

dark-skinned person trying to get an apartment or get into a disco," says Dirk Nuyts, an immigration lawyer with Fragomen, Del Rey, Bernsen & Loewy LLP, a Brussels-based firm.

Several EU countries have sizeable minority populations that make up major portions of their blue-collar work force; Turks in Germany and Albanians in Greece. "I can imagine this will invite people to challenge decisions in other places in Europe where there's racism," says Mr. Nuyts.

The ruling is likely to have an impact in the United Kingdom. Mr. Feryn's utterances "wouldn't have been perceived to be a direct discriminatory act" under British law, says James Warren, a Field Fisher lawyer in London. "The U.K. government will have to examine the decision quite closely to determine what steps, if any, it should be taking."

A number of legal nuances in the court's judgment will make it easier for complaints to be brought against employers. For one thing, the court confirmed that social groups such as CGKR have standing to bring cases, even without other complainants. And, the court said, employers who make broad, discriminatory statements will be presumed to be discriminating in hiring -- it is up to them to prove otherwise.

--