

Arrêt No. 41/2009

1) Reference Details

Jurisdiction: Cour d'Arbitrage, Belgium

Date of Decision: 11 March 2009

Case Status: Concluded

2) Facts

The applicant sought the annulment of the Law of 10 May 2007 on the fight against certain forms of discrimination. They believed that it was incompatible with articles 10 and 11 of the Constitution in that it limited motifs of discrimination to an enumerated list, resulting in criminal sanctions for discrimination on grounds which were enumerated, but not others.

3) Law

- Law 10 May 2007 on the fight against certain forms of discrimination
- Belgian Constitution Articles 10 and 11
- Article 14 European Convention on Human Rights 1950
- Arrêt 157/2004, 6 October 2004

4) Legal Arguments

The applicant submitted that such a difference in treatment, between persons discriminated against on the basis of criteria mentioned in the law, and persons discriminated against on the basis of criteria not mentioned in the Law, resulted in discrimination incompatible with articles 10 and 11 of the Constitution.

The Government responded that a closed list is reasonably justified. The Arrêt 157/2004 which eliminated the closed list from the Law of 25 February 2003 created problems including legal uncertainty; a high level of demand on the judiciary; and, complicated coordination with the rest of the federal legislation.

Furthermore the Government argued that the Court in Arrêt 157/2004 had condemned the incoherence of the legislature, which had declared it wished to fight all forms of discrimination and then listed a limited set of such grounds. They claimed that in the current case the intention is expressly to fight certain forms of discrimination in a particular way.

The Government contended that an open ended list results in legal uncertainty and an individual is unable to know in advance whether an act is legal or not. In addition, lack of definition results in an infinite number of legal suits which are later declared inadmissible and their existence creates difficulties, not least the excessive judicial interference in social and work relations.

5) Decision

The court found that the adoption of an exhaustive list did not constitute discrimination for motives not figured on the list. By establishing discrimination as a constitutive element of criminal offences in articles 21 -23 of the law, the legislature had to define the grounds of such discrimination in order to comply with the principle of legality in criminal matters, as was stated by the court in Arrêt 157/2004.

The court considered that, although particular grounds of discrimination are not included under this specific law, it does not mean that victims of such discrimination have no protection at all. Recourse is provided by civil actions which are possible by all victims of discrimination of any sort. The fact that this law provides a different specific sanction for discrimination on certain grounds is not, considering the nature of the offences, disproportionate.

Therefore the request for annulment of the law is rejected.