

SUMMARY

# **ECJ 18 December 2014, case C-354/13 (Fag og Arbejde, acting on behalf of Karsten Kaltoft & Kommunerne Landsforening), Disability discrimination**

## **Facts**

Mr Kaltoft was hired by the Municipality of Billund in 1996 as a childminder, to take care of children in his home. He performed that function for approximately 15 years. During the entire period he was obese. He made several unsuccessful attempts to lose weight. Owing to a decrease in the number of children in the municipality, Mr Kaltoft had only three children to take care of from mid September 2010, instead of four, the number for which he had received authorisation. The municipal education inspectors were requested to nominate one childminder for dismissal. They selected Mr Kaltoft to be that individual. During a meeting held on 1 November 2010 to discuss this decision, Mr Kaltoft's obesity was mentioned. There is disagreement over how his obesity was mentioned and on the extent to which it had been a factor in the decision-making process leading to his dismissal. The municipality dismissed him "following a specific assessment on the basis of a decline in the number of children, thus that of the workload, having severe financial implications for the childminding service and its organisation." Mr Kaltoft believed that his dismissal was motivated by his obesity. He was the only childminder in Billund who was chosen to be dismissed.

## **National proceedings**

His union FOA brought an action before the local district court, seeking compensation for

discrimination. The court referred four questions to the ECJ. The first question was, essentially, whether EU law lays down a general principle of non-discrimination on ground of obesity as such in employment. The fourth question was, essentially, whether Directive 2000/78 must be interpreted as meaning that a worker's obesity can constitute a 'disability' and, if so, what the criteria are for protection of an obese worker against disability-based discrimination.

### **ECJ's findings**

- 1.The scope of Directive 2000/78 should not be extended by analogy beyond the grounds listed exhaustively in Article 1. Consequently, obesity cannot as such be regarded as a ground in addition to those in relation to which the directive prohibits discrimination (§ 31-40).
- 2.The concept of 'disability' refers to a limitation which results in particular from long-term physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers (see HK Danmark, C-363/12). It does not depend on the extent to which the person may or may not have contributed to the onset of his disability. The mere fact that appropriate accommodation measures had not been taken in respect of Mr Kaltoft during the approximately 15 years that he worked as a childminder does not mean that he cannot be a disabled person within the meaning of the directive. It is for the referring court to ascertain whether Mr Kaltoft's obesity entailed a limitation as described above (§ 53-63).
- 3.Member States must provide for a shift in the burden of proof (§ 63).

### **Ruling**

- 1.EU law must be interpreted as not laying down a general principle of non-discrimination on grounds of obesity as such as regards employment and occupation.
- 2.Council Directive 2000/78 [...] must be interpreted as meaning that the obesity of a worker constitutes a 'disability' within the meaning of that directive where it entails a limitation resulting in particular from long-term physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers. It is for the national court to determine whether, in the main proceedings, those conditions are met.

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**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2014-12-18

**Case number:** C-354/13