

SUMMARY

**ECJ 26 January 2021, Case C-16/19
(Szpital Kliniczny im. dra J.
Babińskiego Samodzielny Publiczny
Zakład Opieki Zdrowotnej w
Krakowie), Disability Discrimination,
General Discrimination**

***VL – v – Szpital Kliniczny im. dra J. Babińskiego Samodzielny
Publiczny Zakład Opieki Zdrowotnej w Krakowie, Polish Case***

Summary

Payment of an allowance only to workers with disabilities who have submitted disability certificates after a date chosen by that employer may constitute direct or indirect discrimination on the grounds of disability.

Question

Must Article 2 of Directive 2000/78 be interpreted as meaning that the practice adopted by an employer and consisting in the exclusion of workers with disabilities, who have already submitted disability certificates to that employer before the date chosen by that employer for the submission of such a certificate, from receiving an allowance paid to workers with disabilities may be covered by the ‘concept of discrimination’ referred to in that provision?

Ruling

Article 2 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that:

the practice adopted by an employer and consisting in the payment of an allowance to workers with disabilities who have submitted their disability certificates after a date chosen by that employer, and not to workers with disabilities who have submitted those certificates before that date, may constitute direct discrimination if it is established that that practice is based on a criterion that is inextricably linked to disability, inasmuch as it is such as to make it impossible for a clearly identified group of workers, consisting of all the workers with disabilities whose disabled status was necessarily known to the employer when that practice was introduced, to satisfy that temporal condition;

that practice, although apparently neutral, may constitute discrimination indirectly based on disability if it is established that, without being objectively justified by a legitimate aim and without the means of achieving that aim being appropriate and necessary, it puts workers with disabilities at a particular disadvantage depending on the nature of their disabilities, including whether they are visible or require reasonable adjustments to be made to working conditions.

Creator: European Court of Justice (ECJ)

Verdict at: 2021-01-26

Case number: C-16/19