

## SUMMARY

# ECJ 1 December 2016, case C-395/15 (Daouidi), Discrimination

***&lt;p&gt;A ‘temporary’ inability to work may qualify as a ‘long-term’ limitation within the meaning of the ECJ’s case law on Directive 2000/78. Whether this is the case is for the national court to determine. The court may take into account that it is not clear how long the person may take to recover.&lt;/p&gt;***

### Summary

A ‘temporary’ inability to work may qualify as a ‘long-term’ limitation within the meaning of the ECJ’s case law on Directive 2000/78. Whether this is the case is for the national court to determine. The court may take into account that it is not clear how long the person may take to recover.

### Facts

Mr Daouidi was employed as a kitchen assistant in a Spanish hotel. He slipped on the kitchen floor, dislocating an elbow, which had to be put in plaster. Eight weeks later, while still temporarily unable to work, he was dismissed with immediate effect on grounds of poor performance. He brought legal proceedings against his employer.

### National proceedings

By the time the case was heard in court, which was six months after the accident, Mr Daouidi’s elbow was still in plaster. The court found that the true reason for Mr Daouidi’s dismissal was not performance but his inability to work for an indeterminate duration. As one of Mr Daouidi’s arguments was that his dismissal was based on ‘disability’ within the meaning of Directive 2000/78, and was therefore discriminatory, the court found it necessary to refer certain questions to the ECJ.

## **Questions referred to the ECJ**

The Spanish court referred five questions to the ECJ. The first four related to the EU Charter of Fundamental Rights. The fifth question was whether a person who is temporarily unable to work for an indeterminate duration has a disability that is ‘long-term’ within the meaning of the ECJ’s case law on Directive 2000/78.

## **ECJ’s findings**

The Court held that it had no jurisdiction to answer the first four questions.

As the Court had held previously, the concept of disability in Directive 2000/78 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”. Neither the Directive – nor the UN Convention on the Rights of Persons with Disabilities, in line with which the Directive must be interpreted – defines ‘long-term’.

The fact that Mr Daouidi was considered to be ‘temporarily’ unable to work under Spanish law, does not prevent the limitation of his ability to work from being treated as ‘long-term’ within the meaning of the Directive.

Whether a limitation is ‘long-term’ must be assessed at the time of the (allegedly) discriminatory act. As this is a factual assessment, it is a question to be determined by the referring court. It must make its decision on all of the objective evidence before it, established on the basis of current medical and scientific knowledge and data. The court may find a limitation is long-term (i) if, at the time of the allegedly discriminatory act, it is not clear how long the person is likely to be incapacitated for or (ii) if the person is likely to be incapacitated for a long time.

## **Ruling**

The fact that a person is temporarily incapacitated for work, as defined in national law, for an indeterminate length of time, as the result of an accident at work, does not mean, in itself, that the limitation of that person’s capacity can be classified as ‘long-term’, within the meaning of the definition of ‘disability’ laid down by the Directive, read in light of the United Nations Convention on the Rights of Persons with Disabilities, which was approved on behalf of the European Community by Council Decision 2010/48/EC of 26 November 2009.

It is possible to find such a limitation ‘long-term’ either if, at the time of the allegedly discriminatory act, there is no clearly-defined prognosis of short-term progress or if the

incapacity is likely to be significantly prolonged before the person recovers.

The referring court must base its decision on all relevant evidence in its possession relating to that person's condition, in particular documents and certificates based on current medical and scientific knowledge and data.

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

**Verdict at:** 2016-12-01

**Case number:** C-395/15 (Daouidi)