

European Union, CJEU, C-354/13, Kaltoft V Municipality of Billund, Judgement of 16 December, 2014

Deciding bodies and decisions

CJEU, C-354/13 Kaltoft V Municipality of Billund, 16 December, 2014, ECLI:EU:C:2014:2463

Area of law

Non-discrimination

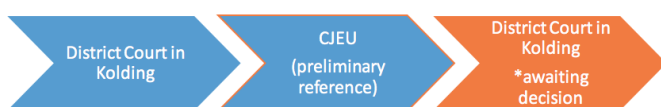
Subject matter

Discrimination on the basis of disability - obesity as a form of disability - lack of general principle of prohibition of discrimination based on obesity - obesity may fall within the concept of disability discrimination for the purpose of EU law

Summary Facts Of The Case

After 15 years of working as a municipality's babysitter in Billund, and following a decline in the number of children requiring care, Mr. Kaltoft was dismissed in November 2010 as the only babysitter to be let go. He had been severely obese during his whole career and several times, his employer offered assistance to help Mr. Kaltoft lose weight. His obesity was also mentioned in a meeting where Mr. Kaltoft inquired about the reason why he had been dismissed. Mr. Kaltoft claimed that he was dismissed on account of his obesity and he filed a suit before the Court in Kolding claiming discriminatory dismissal due to obesity, and a compensation.

Diagram



Case timeline representation

Impact on Jurisprudence

The decision of the CJEU had an important effect on the national case law of the Member States.

The CJEU decided that:

- 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.

- 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 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.

Before the Danish city court, the Danish trade union, on behalf of Mr Kaltoft, is claiming that international convention obligations (UNCRPD) include fundamental rights regarding anti-discrimination, including a prohibition against discrimination based on obesity. These convention obligations can be enforced by the Danish courts, as Denmark has incorporated or adopted the conventions in question Fundamental rights. The Danish city court has still to deliver its judgment. Subsequently, the judgment can be appealed by both parties to the Danish high court.

Spill-over effect to other EU Member States:

Belgium, Labour Court/Tribunal du travail de Liège, 20/06/2016

By an e-mail sent on 21.02.2016, Ms B answered to M. D's application for a job as a driving instructor. This e-mail contained the following sentences: "After our interview, and due reflection, unfortunately your physical profile does not fit for the job of driving instructor in my undertaking. Did you ever think about losing weight? I think this is a handicap for this job".

According to the Labour Court, which referred to the relevant case-law of the Court of Justice (Case C-335/11, 11 April 2013, HK Danmark Case C-354/13, 18 December 2014), obesity is not as such a prohibited ground of differentiation. However, it may become a disability when 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. In casu, M. D was treated less favourably than another person in a comparable situation so that the distinction at stake should be regarded as a direct discrimination. As regards the possible ground of justification in relation with the genuine and determining occupational requirement, the Labour Court pointed out that Ms B. relied upon the students and driving instructors' security but this justification was only based on theoretical and general assertions, Ms B. remaining unable to concretely apply this justification in casu. Moreover, the defendant did not provide for reasonable accommodation (by instance by examining whether M. D. could have been hired only for the theoretical part of the driving lessons).

Sources - CJEU Case Law

- *Chacón Navas* C-13/05, ECLI:EU:C:2006:456
- *Åkerberg Fransson* C-617/10, ECLI:EU:C:2013:280
- *HK Danmark* C-335/11, ECLI:EU:C:2013:222

Comments

Role of the Charter

The national court was uncertain as to whether obesity is a grounds for discrimination addressed under EU discrimination law, and referred questions to that effect to the CJEU. The national decision invokes art. 6 TEU as a potential source where obesity could be found as a discriminatory ground, and the Directive 2000/78/EC, where obesity could potentially be found within the meaning of “disability”. Connecting factor in this case is the implementation of an EU act (Directive 2000/78/EC) by the national legislation (Law on anti-discrimination).

The CJEU applied *Chacón Navas* C-13/05 (Court declined to extend the list of protected grounds to ‘sickness’) to answer the first question. The CJEU recognizes the existence the general principle of non-discrimination but notes that the exhaustive list of discrimination grounds in Article 1 of Directive 2000/78/EC cannot be extended by analogy. The CJEU also reiterated *Åkerberg Fransson* C-617/10, summarily pointing out that the EU Charter was inapplicable in this case because obesity discrimination does not fall within the scope of EU law.

AG Jääskinen Opinion stated that the Charter does not apply because:

- The general non-discrimination clause of Article 10 TFEU and the legal basis of Article 19 TFEU do not refer to obesity;
- The Equality Directives do not refer to obesity either, and the fact that this case concerns an area falling within the Union’s competence (i.e. employment policy) ‘is an insufficient foundation for concluding that a Member State (...) is “implementing” EU law.’

Hence, even if the list of discrimination grounds in Article 21 of the EU Charter is open-ended, there is not a sufficient ‘degree of connection with EU law’ to consider obesity as a free-standing ground of discrimination on the basis of the EU Charter.

To answer the second question the CJEU analysed whether, under some circumstances, obesity could fall within the concept of disability developed in *HK Danmark* C-335/11 - ‘disability’ as ‘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’ (*Kaltoft*, para 53, citing *HK Danmark*, para 38). The CJEU agrees with AG Jääskinen that, in some circumstances, obesity may hinder the full and effective participation of some persons in professional life on a long-term basis (e.g. if it leads to mobility problems), and in those cases, obesity discrimination can fall within the EU concept of ‘disability discrimination’
