

Case Summary

Fag og Arbejde (FOA), acting on behalf of Karsten Kaltoft v Kommunernes Landsforening (KL), acting on behalf of the Municipality of Billund

Preliminary ruling under article 267 TFEU, from the *retten i Kolding* (Denmark).

1. Reference details

Jurisdiction: European Court of Justice (Fourth Chamber)

Date of decision: 18 December 2014

Link to full case:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=160935&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=216919>

2. Facts of the case

Mr Karsten Kaltoft worked for 15 years for the Municipality of Billund (Denmark) as a childminder. Throughout the duration of his contract, Mr Kaltoft was obese, as defined by the World Health Organization. Mr Kaltoft was responsible for taking care of children in his home. On 22 November 2010, the municipality terminated his employment contract without giving reasons. Mr Kaltoft challenged the decision. In a meeting between Mr Kaltoft and two municipality staff about his dismissal, Mr Kaltoft's obesity was mentioned, although the context in which it was mentioned is a matter of disagreement between the parties. A letter from the municipality dated 4 November confirming the decision to dismiss stated that the decision was taken "following a specific assessment on the basis of a decline in the number of children, thus that of the workload, having severe financial implications on the childminding service and on its organisation". However, the municipality did not indicate the reasons as to why it was Mr Kaltoft who was chosen to be dismissed. Taking the view that the dismissal resulted from unlawful discrimination on grounds of obesity, the Fag og Arbejde, a workers' union acting on behalf of Mr Kaltoft, brought proceedings before a Danish court seeking a declaration of that discrimination as well as compensation.

The *retten i Kolding*, Denmark (District Court of Kolding sought a preliminary ruling from the Court of Justice in order to assist it in adjudicating the case. It asked the Court to specify whether EU law itself prohibits discrimination on grounds of obesity and whether obesity can constitute a disability and therefore fall within the scope of the EU Directive 2000/78/EC, which establishes a general framework for combating discrimination in employment and occupation on several grounds including disability.

3. Law

Regional Law

- Charter of Fundamental Rights of the European Union;
- Recital paragraphs 1, 11, 12, 15, 28, and 31 in the preamble to Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;

- Articles 1, 2(1) and (2), 3(1)(c), 5, 8(1), 10(1) and (2) of Council Directive 2000/78/EC.

National Law

- Paragraphs 1(1), 2(1), 2a, 7(1) and 7a of Consolidated Law No 1349 of 16 December 2008 (the Law on anti-discrimination).

4. Legal Arguments

Claimant's arguments

According to the applicant in the main proceedings, Mr Kaltoft's dismissal represented an act of discrimination on the basis of obesity. Mr Kaltoft, who had been working for the Municipality of Billund for 15 years, was the only childminder to be dismissed on the ground of an alleged decline in workload. Mr Kaltoft was unable to ascertain in specific terms the reasons as to why he was the childminder who was chosen to be dismissed and he alleges that his obesity had been a decisive factor in the decision-making process leading to his dismissal. The applicant claims compensation for the discrimination suffered.

Respondent's arguments

By letter of 22 November 2010, the Municipality of Billund dismissed Mr Kaltoft indicating that his dismissal was taking place following a "specific assessment on the basis of a decline in the number of children". The Municipality did not comment on the view expressed by Mr Kaltoft as to the real reason for his dismissal.

The retten i Kolding questions to the CJEU

The retten i Kolding decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

1. *Is it contrary to EU law, as expressed, for example, in Article 6 TEU concerning fundamental rights, generally or particularly for a public-sector employer to discriminate on grounds of obesity in the labour market?*
2. *If there is an EU prohibition of discrimination on grounds of obesity, is it directly applicable as between a Danish citizen and his employer, a public authority?*
3. *Should the Court find that there is a prohibition under EU law of discrimination on grounds of obesity in the labour market generally or in particular for public-sector employers, is the assessment as to whether action has been taken contrary to a potential prohibition of discrimination on grounds of obesity in that case to be conducted with a shared burden of proof, with the result that the actual implementation of the prohibition in cases where proof of such discrimination has been made out requires that the burden of proof be placed on the respondent/defendant employer ...?*
4. *Can obesity be deemed to be a disability covered by the protection provided for in Council Directive 2000/78/EC (...) and, if so, which criteria will be decisive for the assessment as to whether a person's obesity means specifically that that person is protected by the prohibition of discrimination [on] grounds of disability as laid down in that directive?*

5. Decision

The Court stated that the general principle of non-discrimination is a fundamental right which forms an integral part of the general principles of EU law. This principle is therefore binding on member states where a national situation falls within the scope of EU law.

In that regard, the Court noted that no provision of the Treaties or of secondary EU legislation prohibits discrimination on grounds of obesity as such. In particular, the Employment Equality Directive (Directive 2000/78/EC) does not cite obesity as a ground for discrimination and the scope of that directive should not be extended by analogy beyond the discrimination based on the grounds listed exhaustively. Moreover, the Charter of Fundamental Rights of the European Union is likewise inapplicable in such a situation.

Thus, with regard to the first question, namely whether discrimination on grounds of obesity is unlawful, the Court considered that in the area of employment and occupation, EU law does not lay down a general principle of non-discrimination on grounds of obesity as such. Consequently, there was no need to consider the second and third questions.

With respect to the fourth question, namely whether obesity can be considered a disability, the Court recalled that the concept of “disability” within the meaning of the directive must be understood as:

[R]eferring 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.

The Court emphasised that this concept must be understood as referring “not only to the impossibility of exercising a professional activity, but also to a hindrance to the exercise of such an activity”. The directive has the object of implementing equal treatment and aims in particular to enable a person with a disability to have access to or participate in employment. It would run counter to the aim of the directive if its application was dependent on the origin of the disability. Further, the concept of “disability” within the meaning of Directive 2000/78 does not depend on the extent to which the person may or may not have contributed to the onset of his disability.

The Court observed that the definition of the concept of “disability” comes before the determination and assessment of the appropriate accommodation measures that, pursuant to the directive, employers must take in each particular case so as to enable a person with a disability to have access to, participate in, or advance in employment (unless such measures result in a disproportionate burden being imposed on the employer). Therefore, the mere fact that such accommodation measures may not have been taken in respect of Mr Kaltoft does not mean that he could not be considered a disabled person within the meaning of the directive.

The Court stated, therefore, that:

[I]f, under given circumstances, the obesity of the worker: entails a limitation which results in particular from physical, mental or psychological impairments which in interaction with

various barriers may hinder the full and effective participation of that person in professional life on an equal basis with other workers, and the limitation is a long-term one, such obesity can fall within the concept of "disability" within the meaning of the directive.

This would be the case, in particular, if the obesity of the worker hindered his or her effective participation on account of reduced mobility or the onset of medical conditions preventing that person from carrying out work or causing discomfort when exercising professional activity.

It was for the national court to determine whether Mr Kaltoft's obesity fell within the definition of "disability".