

S. Coleman v. Attridge Law and Steve Law Case C-303/06

1) Reference Details

Jurisdiction: European Court of Justice (Grand Chamber)

Date of Decision: 17 July 2008

Link to Decision: <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-303/06>.

2) Facts

The claimant in the main proceedings, Ms Coleman, worked from 2001 as a legal secretary for Attridge Law, a law firm in London, and Mr Law, a partner at this firm (together, the “former employer”). In 2002, the claimant gave birth to a son who is disabled with bronchomalacia and congenital laryngomalacia. The claimant is the primary carer of her son.

On 4 March 2005, the claimant accepted voluntary redundancy and stopped working for Attridge Law. On 30 August 2005, she brought a claim to the Employment Tribunal, London South, for constructive dismissal and disability discrimination against her former employer, alleging that she had been treated less favourably than other employees because she was the primary carer of a disabled child. Examples of discriminatory treatment allegedly suffered by the claimant include the refusal of her employers to allow her to return to her existing job after coming back from maternity leave, and refusing to provide her with the same flexibility in relation to working arrangements as those of her colleagues with non-disabled children.

The claimant argued that Council Directive 2000/78/EC (27 November 2000) is intended to prohibit discrimination not only against disabled persons themselves, but also against individuals who are victims of discrimination because they are associated with a disabled person. Accordingly, the relevant national law, the Disability Discrimination Act 1995, should be interpreted as including protection against discrimination by association. Her former employer disagrees.

The claimant’s case was contingent on the Directive being interpreted as prohibiting discrimination by association. The South London Employment Tribunal held a preliminary hearing only on that issue, following which it stayed the proceedings and referred the following questions to the European Court of Justice:

1. In the context of the prohibition of discrimination on grounds of disability, does the Directive only protect from direct discrimination and harassment persons who are themselves disabled?
2. If the answer to Question (1) above is in the negative, does the Directive protect employees who, though they are not themselves disabled, are treated less favourably or harassed on the ground of their association with a person who is disabled?
3. Where an employer treats an employee less favourably than he treats or would treat employees, and it is established that the ground for the treatment of the employee is that the employee has a disabled son for whom the employee cares, is that treatment direct discrimination in breach of the principle of equal treatment established by the Directive?

4. Where an employer harasses an employee, and it is established that the ground for the treatment of the employee is that the employee has a disabled son for whom the employee cares, is that harassment a breach of the principle of equal treatment established by the Directive?

3) Law

EU Law

EC Treaty

- Article 13 (as added by the Treaty of Amsterdam) – discretionary anti-discrimination powers granted to the Council.

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

- Preamble – recitals 6, 11, 16, 17, 20, 27, 31, and 37.
- Article 1 – purpose of the directive.
- Article 2(1) – definition of the principle of equal treatment.
- Article 2(2)(a) – prohibition of direct discrimination.
- Article 2(3) – prohibition of harassment.
- Article 3(1)(c) – scope of application of the directive.
- Article 5 – reasonable accommodation for disabled persons.
- Article 7 – positive action
- Article 10 – burden of proof
- Article 18 – requirement of Member States to implement the directive.

National Law

Disability Discrimination Act 1995

4) Legal Arguments

The United Kingdom, Greek, Italian and Netherlands Governments acting as Agents

Argued that, in light of Articles 5 and 7(2) of Directive 2000/78/EC and of recitals 16, 17, and 27 in the preamble to Directive 2000/78, the prohibition of direct discrimination laid down by the directive covers only those discriminated against on the basis of characteristics which are particular to them.

The United Kingdom, Italian and Netherlands Governments acting as Agents

Argued that it followed from the judgment in Case C-13/05 *Chacón Navas* [2006] ECR I – 6467 that the scope *ratione personae* of Directive 2000/78/EC must be interpreted strictly.

The Italian Government acting as Agent

Argued that in *Chacón Navas*, the Court opted for a strict interpretation of the concept of disability and its implications in an employment relationship.

The Lithuanian and Swedish Governments and the Commission of the European Communities acting as Agents

Argued that the effectiveness of Directive 2000/78/EC would be undermined if an employee in the claimant's situation cannot rely on the prohibition of direct discrimination where it has been established that he has been treated less favourably than another employee is, has been or would be treated in a comparable situation, on the grounds of his child's disability, and this is the case even though that employee is not himself disabled.

Opinion of the Advocate General (Poiares Maduro)

The aim of Article 13 EC Treaty and of the Directive is to protect equality and its underlying values of human dignity and autonomy. The effect of the Directive is that it is impermissible for an employer to rely on religion, age, disability, and sexual orientation as a basis for treating some employees less well than others. To do so would be to subject such individuals to unjust treatment and failing to respect their dignity and autonomy. This fact does not change in cases where an employee who is the object of discrimination is not disabled herself. The ground which serves as the basis for the discrimination in this case remains that of disability; disability by association of the claimant's disabled son. Consequently, the Directive does prohibit discrimination by association.

5) Decision

The first part of Question 1, and Questions 2 and 3

The Court explained that the fact that Directive 2000/78/EC includes provisions designed to accommodate specifically the needs of disabled people does not lead to the conclusion that the principle of equal treatment enshrined in that directive must be interpreted strictly, that is, as prohibiting only direct discrimination on grounds of disability and relating exclusively to disabled people. This may read in accordance with recital 6 in the preamble to the directive.

Similarly, the judgment in *Chacón Navas*, did not hold that the principle of equal treatment and the scope *ratione personae* of the directive must be interpreted strictly with regard to the listed grounds. It stated that the wording of Article 13 EC was such that the scope of Directive 2000/78/EC cannot be extended beyond the discrimination based on the grounds listed exhaustively in Article 1 of the directive. The concept of 'disability' in that judgment was not in conflict with the decision of the Court in the case at hand.

In view of the provisions of Articles 1, 2(1), 2(2)(a) and 3(1)(c) of Directive 2000/78, the principle of equal treatment is not limited to people who themselves have a disability within the meaning of the directive. The purpose of the directive, in relation to employment and occupation, is to combat all forms of discrimination on grounds of, *inter alia*, disability. The principle of equal treatment applies not to a particular category of person, but by reference to the grounds set out in Article 1. This interpretation is supported by the wording of Article 13 EC which is constitutive of the legal basis for Directive 2000/78/EC and which confers on the Community the competence to take appropriate action to combat discrimination based on, *inter alia*, disability.

The Court provided that an interpretation of this directive limiting its application only to people who are themselves disabled is liable to deprive that directive of an important element of its effectiveness and to reduce the protection which it is intended to guarantee. It followed from recital 11 in the preamble to the directive that the effectiveness of Directive 2000/78/EC would be undermined if an employee in the claimant's situation could not rely on the prohibition of direct discrimination where it has been established that he has been treated less favourably than another employee is, has been or would be treated in a comparable situation, on the grounds of his child's disability, and this is the case even though that employee is not himself disabled.

In regard to Article 10(1) of the directive and recital 31 in the preamble the Court stated that in the event that Ms Coleman established facts from which it may be presumed that there has been direct discrimination, the effective application of the principle of equal treatment requires that the burden of proof should fall on her employer.

The Court concluded that in light of the foregoing considerations, the answer to the first part of to Questions 2 and 3 must be that Directive 2000/78, and, in particular Articles 1 and 2(1) and 2(a) thereof, must be interpreted as meaning that the prohibition of direct discrimination laid down by those provisions is not limited only to people who are themselves disabled. Where an employer treats an employee who is not himself disabled less favourably than another employee is, has been or would be treated in a comparable situation, and it is established that the less favourable treatment of that employee is based on the disability of his child, whose care is provided primarily by that employee, such treatment is contrary to the prohibition of direct discrimination laid down by Article 2(2)(a).

The second part of Question 1, and Question 4

The Court set out that since, under Article 2(3) of Directive 2000/78, harassment is deemed to be a form of discrimination within the meaning of Article 2(1), it must be held that, for the same reasons set out above, the directive, and, in particular, Articles 1 and 2(1) and (3) thereof, must be interpreted as not being limited to the prohibition of harassment of people who are themselves disabled.

The Court therefore considered that the answer to the second part of Question 1 and to Question 4 must be that Directive 2000/78, and, in particular, Articles 1 and 2(1) and (3) thereof, must be interpreted as meaning that the prohibition of harassment laid down by those provisions is not limited only to people who are themselves disabled. Where it is established that the unwanted conduct amounting to harassment which is suffered by an employee who is not himself disabled is related to the disability of his child, whose care is provided primarily by that employee, such conduct is contrary to the prohibition of harassment laid down by Article 2(3).