

Chacón Navas v. Eurest Colectividades SA, C-13/05

1) Initial Details

Jurisdiction: Court of Justice of the European Communities (Grand Chamber)

Date of Decision: 11 July 2006

Link to full Case: [http://eur-](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_224/c_22420060916en00090009.pdf)

[lex.europa.eu/LexUriServ/site/en/oj/2006/c_224/c_22420060916en00090009.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_224/c_22420060916en00090009.pdf)

2) Facts

The claimant, Ms Chacón Navas, a Spanish national, was employed by Eurest Colectividades SA, an undertaking specialising in catering. She was dismissed while absent from work due to sickness. She had been declared unfit for work by the public health service on 14th October 2003. No details of her illness were given. However, she had been absent from work for eight months at the time of the dismissal (14 May 2004). The employer did not give any reason for her dismissal and recognised it as unlawful; therefore offering compensation. Ms Chacón Navas argued that the dismissal was in fact void under Spanish law and that accordingly, she should be reinstated into her position.

3) Law

European Community law

- Art 136 EC (formerly Art 117 of the EC Treaty) (promotion of employment, living and working conditions within the European Community)
- Art 137(1) and (2) EC (formerly Art 118(1) and (2) of the EC Treaty) (Community role in achieving the objectives set by Art 136 EC)
- Council Directive 2000/78 (establishing a general framework for equal treatment in employment an occupation), in particular:
 - Art 1, (general framework for combating discrimination),
 - Art 2(1) and (2) (definition of different discrimination),
 - Art 3 (field of application) and;
 - Art 5 (adjustment for disabled people in the work place)

National Legislation

- Spanish Constitution, Art 14 (prohibition of discrimination)
- Legislative Royal Decree No 1/1995 of 24 March 1995 approving the amended text of the Workers' Statute (Estatuto de los Trabajadores, BOE No 75 of 29 March 1995, p9654), particularly art 55(5) and (6) (definition of void and consequences) and Art 56(1) and (2) (definition of unlawful dismissal and consequences).

4) Legal Argument

The Claimant

Ms Chacón Navas maintained that her dismissal was void according to the Spanish Workers' Statute, which states that "[a]ny dismissal on one of the grounds of discrimination" prohibited by law shall be void and entail the reinstatement of the worker. Ms Chacón

Navas argued that she was subjected to unequal treatment and discrimination, “stemming from the fact that she had been on leave from her employment for eight months” due to sickness.

The employer, Eurest, recognised that Ms Chacón Navas was unlawfully dismissed and offered compensation according to what is prescribed in the Workers’ Statute.

Although sickness is not an expressed ground of discrimination in either Spanish or Community legislation, the referring court argues that it could cause irreversible disability and therefore workers “should be protected under the prohibition of discrimination on the ground of disability in a timely manner”.

Accordingly, the questions posed to the European Court of Justice (ECJ) were:

1. Does Directive 2000/78 include within its protective scope, discrimination on grounds of sickness?
2. In the alternative, “can sickness be regarded as an identifying attribute in addition to the ones in relation to which Directive 2000/78 prohibits discrimination?”

5) Decision

Question One

The Court recalled that Directive 2000/78/EC does not contain a definition of disability. Therefore, this concept “*must be understood as referring to a limitation which results, in particular, from physical, mental or physiological impairments and which hinders the participation of the person concerned in professional life*”.¹ The Directive refers to disability and not to sickness, and the fact that this was a deliberate choice implies that a distinction between the two terms cannot be overseen or reversed by the Court. One of the main attributes of a disability is hindering the worker’s professional life over a long period of time. Consequently, the prohibition of discrimination on grounds of disability cannot arise as soon as a worker develops a sickness.

It follows that a worker who is dismissed only on grounds of sickness is not protected by the prohibition of discrimination on grounds of disability.

Question Two

In answer to the second question, the Court affirmed that sickness cannot, as such, be regarded as an additional ground of discrimination in relation to which Directive 2000/78/EC prohibits discrimination, since the grounds for discrimination listed in the Directive are exhaustive.

¹ Para. 43