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Judgment of the Court of Justice in Case C-13/05

Sonia Chacón Navas v. Eurest Colectividades SA

**THE COURT RULES FOR THE FIRST TIME ON THE CONCEPT OF 'DISABILITY'
FOR THE PURPOSE OF THE DIRECTIVE ON EQUAL TREATMENT IN
EMPLOYMENT AND OCCUPATION**

It clarifies the rules for protecting disabled persons as regards dismissal

Ms Chacón Navas was employed by Eurest, a catering company. In October 2003 she was certified as unfit to work on grounds of sickness which prevented her from returning to work in the short term. In May 2004 Eurest gave Ms Chacón Navas written notice of her dismissal and offered her compensation.

Ms Chacón Navas brought an action against Eurest. Given that sickness is often capable of causing an irreversible disability, the Spanish court takes the view that workers must be protected in a timely manner under the prohibition of discrimination on grounds of disability. It therefore referred to the Court of Justice of the European Communities questions on the interpretation of the directive establishing a general framework for equal treatment in employment and occupation.¹ The purpose of that directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

First of all, the Court holds that the framework laid down by the directive for combating discrimination on the grounds of disability applies to dismissals.

¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

Given that the directive does not define the term 'disability' and does not refer to national law for the definition of that concept, it must be given an autonomous and uniform interpretation. The concept of 'disability' for the purpose of the directive must be understood as a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life.

However, by using the concept of 'disability' in the directive, the legislature deliberately chose a term which differs from 'sickness'. The two concepts cannot therefore simply be treated as being the same.

The Court finds that the importance which the Community legislature attaches to measures for adapting the workplace to the disability demonstrates that it envisaged situations in which participation in professional life is hindered over a long period of time. In order for a limitation to fall within the concept of 'disability', it must therefore be probable that it will last for a long time.

There is nothing in the directive to suggest that workers are protected by the prohibition of discrimination on grounds of disability as soon as they develop any type of sickness.

Thus, a person who has been dismissed by his employer solely on account of sickness does not fall within the general framework laid down by the directive for combating discrimination on grounds of disability.

Next, so far as concerns the protection of disabled persons as regards dismissal, the Court holds that **the directive precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post.**

Finally, the Court held that sickness cannot as such be regarded as a ground in addition to those in relation to which directive prohibits discrimination.

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Languages available: CS, DE, EL, EN, ES, FR, HU, IT, NL, PL, PT, SK, SL

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-13/05>

It can usually be consulted after midday (CET) on the day judgment is delivered.

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731