



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-354/13
FOA, acting on behalf of Karsten Kaltoft v Kommunernes Landsforening
(KL), acting on behalf of the Municipality of Billund

Advocate General Jääskinen considers that morbid obesity may amount to a 'disability' for the purposes of the Equal Treatment in Employment Directive

Whilst there is no general principle of EU law prohibiting discrimination on grounds of obesity in its own right, morbid obesity may come within the meaning of 'disability' if it is of such a degree as to hinder full participation in professional life on an equal footing with other employees

In order to further the principle of equal treatment, the Equal Treatment in Employment Directive¹ lays down a general framework for combating discrimination with respect to employment and occupation. Under this Directive, discrimination on the grounds of religion and belief, disability, age or sexual orientation is prohibited in the field of employment. In addition, a number of articles in the Treaties and the Charter of Fundamental Rights address the issue of discrimination and disability, specifically Article 21 of the EU Charter of Fundamental Rights prohibits "discrimination on any ground such as ... disability". None of these provisions refers explicitly to obesity.

Karsten Kaltoft had been working for the Municipality of Billund in Denmark as a child-minder hired to care for other people's children in his own home for fifteen years when his employment was terminated on 22 November 2010. A decline in the number of children was stated as the grounds for dismissal, yet there was no express reason given for selecting Mr Kaltoft. Throughout his employment Mr Kaltoft never weighed less than 160kg and, with, therefore, a BMI of 54, he was classified as obese. Whilst Mr Kaltoft's obesity was discussed at his official dismissal hearing, the parties disagree as to how it came to be discussed and the Municipality denies that it formed part of the basis of its dismissal decision. Mr Kaltoft, however, claims that his dismissal was rooted in unlawful discrimination against him due to his weight, and has taken action in a Danish District Court claiming damages for this discrimination.

The Retten i Kolding (Court of Kolding, Denmark), hearing Mr Kaltoft's claim, has asked the Court of Justice to clarify whether EU law, notably the Treaty and Charter, includes a self-standing prohibition on discrimination on the grounds of obesity. Alternatively, it asks if obesity can be classified as a disability and therefore fall within the scope of the Equal Treatment in Employment Directive.

In his Opinion today, Advocate General Niilo Jääskinen points out that none of the Treaty or Charter articles explicitly refers to obesity as a prohibited ground of discrimination. It would, therefore, only be possible for such a prohibition to exist as part of a general prohibition on any type of discrimination in the labour market derived from the open-ended wording of Article 21 of the Charter. However, the Charter only binds Member States when they are implementing EU law, and there was no indication that any provision of EU law supporting a general prohibition on discrimination in the labour market was being implemented by Denmark. The Advocate General emphasises that all EU legislative acts prohibiting discriminatory conduct are addressed to specific grounds of discrimination within definitive subject areas, rather than precluding any discriminatory treatment in a generalised manner. Advocate General Jääskinen therefore concludes **that there is no general, stand-alone prohibition on discrimination on grounds of obesity in EU law.**

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

As to the question of whether obesity can be classified as a ‘disability’ under the Equal Treatment in Employment Directive, the Advocate General points out that whilst the concept of disability is not defined in the Directive, the Court has stated that a ‘disability’ in this context refers to limitations which result from long-term physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person in professional life on an equal basis with other workers. Although not every illness would therefore fall within the scope of this concept of disability, certain illnesses, if medically diagnosed and resulting in long-term limitations, could be classified as a disability for the purposes of the Directive.

Advocate General Jääskinen highlights that disability results from interaction between persons with impairments and the attitudinal and environmental barriers that hinder their full and effective participation in the workplace. As the Directive’s purpose is to combat *all forms* of discrimination on the grounds of disability, no link has to be made between the work concerned and the disability at issue. Even if a condition does not affect the capacity of that person to carry out the specific work in question, it can still be a hindrance to full and effective participation on equal terms with others. There can be long-term physical, mental, or psychological impairments that do not make impossible certain work, but which render the carrying out of that job or participation in professional life objectively more difficult and demanding. Typical examples of this are handicaps severely affecting mobility or significantly impairing the senses such as eye-sight or hearing. Thus, it need not be impossible for Mr Kaltoft to carry out his work as a child-minder with the Municipality of Billund before he can rely on the disability discrimination protection afforded by the directive.

The Advocate General explains that, although there is no obligation to maintain an individual in employment who is not competent to perform the essential functions of the post, reasonable measures should be taken to accommodate the disabled individual unless the burden on the employer would be disproportionate.

Therefore, **Mr Jääskinen considers that if obesity has reached such a degree that it plainly hinders participation in professional life, then this can be a disability.** In his opinion, **only extreme, severe or morbid obesity**, that is to say a BMI of over 40, **could suffice to create limitations**, such as problems of mobility, endurance and mood, **which amount to a ‘disability’** for the purposes of the Directive.

It would be for the national court to determine whether Mr Kaltoft’s obesity falls within this definition.

Finally, the Advocate General adds that the origin of the disability is irrelevant. The notion of disability is objective and does not depend on whether the applicant has contributed causally to the acquisition of his disability through “self-inflicted” excessive energy intake. Otherwise physical disability resulting from reckless risk-taking in traffic or sports would be excluded from the meaning of disability.

NOTE: The Advocate General’s Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell 📞 (+352) 4303 3355

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