



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 183/14**

Luxembourg, 18 December 2014

Judgment in Case C-354/13

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

## **Obesity can constitute a ‘disability’ within the meaning of the Employment Equality Directive**

*While no general principle of EU law prohibits, in itself, discrimination on grounds of obesity, that condition falls within the concept of ‘disability’ where, under particular conditions, it hinders the full and effective participation of the person concerned in professional life on an equal basis with other workers*

In order to clarify the principle of equal treatment, an EU directive<sup>1</sup> establishes a general framework for combating discrimination in employment and occupation. Pursuant to this directive, discrimination based on religion, belief, disability, age or sexual orientation in relation to employment is prohibited.

Mr Karsten Kaltoft worked for 15 years for the Municipality of Billund (Denmark) as a childminder. In the course of that activity, he was responsible for taking care of children in his home. On 22 November 2010, the municipality terminated his employment contract. While the dismissal was motivated by a decrease in the number of children to be taken care of, the municipality did not indicate the reasons as to why it was Mr Kaltoft who was chosen to be dismissed. Throughout the duration of his employment contract, Mr Kaltoft was considered obese under the definition of the World Health Organization (WHO). Although Mr Kaltoft’s obesity was mentioned during a meeting on his dismissal, the parties are in disagreement over the manner in which that issue was discussed. The municipality thus denies that obesity is among the reasons for Mr Kaltoft’s dismissal. Taking the view that the dismissal resulted from unlawful discrimination on grounds of obesity, the Fag og Arbejde (FOA), 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.

In the context of assessing that request, the District Court of Kolding, Denmark (retten i Kolding) is asking the Court of Justice to specify whether EU law itself prohibits discrimination on grounds of obesity. It is also asking whether obesity can constitute a disability and therefore falls within the scope of the above directive.

In its judgment today, the Court states, first of all, 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 recalls 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 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.

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<sup>1</sup> 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) (‘the Employment Equality Directive’).

In this case, the Court considers that the case file contains nothing to suggest that a dismissal purportedly based on obesity as such would fall within the scope of EU law.

Consequently, the Court holds 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.**

As for whether obesity can constitute a ‘disability’ within the meaning of the directive, the Court observes that the purpose of the directive is to lay down a general framework for combating discrimination, in the area of employment and occupation, on any of the grounds referred to in the directive, which include disability.

The concept of ‘disability’ within the meaning of the directive must be understood as referring 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 emphasises 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. **In addition, it would run counter to the aim of the directive if its application was dependent on the origin of the disability.**

Furthermore, the Court observes 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.

On those grounds, the Court finds that if, 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. Such would be the case, in particular, if the obesity of the worker hindered that 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 is for the national court to determine whether Mr Kaltoft’s obesity falls within the definition of ‘disability’.

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**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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