



Press and Information

Court of Justice of the European Union

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Judgment in Case C-16/19

VL v Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład
Opieki Zdrowotnej w Krakowie

The practice adopted by an employer and consisting in the payment of an allowance only to workers with disabilities who have submitted disability certificates after a date chosen by that employer may constitute direct or indirect discrimination on the grounds of disability

VL was employed by a hospital in Kraków (Poland) from October 2011 to September 2016. In December 2011, she obtained a disability certificate, which she submitted to her employer that same month. In order to reduce the amount of the contributions payable by the hospital to the Państwowy Fundusz Rehabilitacji Osób Niepełnosprawnych (State Fund for the Rehabilitation of Persons with Disabilities) (PFRON), the director of that establishment decided, following a meeting with the staff which took place in the second half of 2013, to grant a monthly allowance to employees who, following that meeting, submitted certificates attesting to their disabilities. On the basis of that decision, the allowance was granted to thirteen workers who had submitted their certificates after that meeting, whereas sixteen other workers, including VL, who had submitted their certificates earlier, did not receive that allowance.

The action brought against her employer having been dismissed at first instance, VL brought an appeal before the referring court, the Sąd Okręgowy w Krakowie (Regional Court, Kraków, Poland). In her view, the practice adopted by her employer, the effect of which was to exclude certain workers with disabilities from receiving an allowance granted to workers with disabilities, and the sole aim of which was to reduce the contributions payable by the hospital by encouraging workers with disabilities who had not yet submitted disability certificates to do so, is contrary to the prohibition of any direct or indirect discrimination on the grounds of disability laid down by Directive 2000/78.¹

In that context, having doubts as to the interpretation of Article 2 of that directive and, in particular, as to whether discrimination, within the meaning of that provision, may be taken to occur where a distinction is made by an employer within a group of workers with the same protected characteristic, the referring court decided to refer a question to the Court of Justice. It sought to ascertain whether the practice adopted by an employer and consisting in the exclusion of workers with disabilities, who have already submitted disability certificates to that employer before the date chosen by that employer for the submission of such a certificate, from receiving an allowance paid to workers with disabilities may constitute discrimination for the purposes of that provision.

Findings of the Court

The Court, sitting as the Grand Chamber, begins by examining whether a difference in treatment occurring within a group of persons who have disabilities may be covered by the 'concept of discrimination' referred to in Article 2 of Directive 2000/78. In that regard, it notes that the wording of that article does not permit the conclusion that, regarding that protected ground, the prohibition of discrimination laid down by that directive is limited only to differences in treatment between persons who have disabilities and persons who do not have disabilities. The context of that article

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).

does not include such a limitation either. As regards the objective of that directive, it supports an interpretation whereby that directive does not limit the circle of persons in relation to whom a comparison may be made in order to identify discrimination on the grounds of disability to those who do not have disabilities. The Court also finds that, while it is true that instances of discrimination on the grounds of disability, for the purposes of that directive, are, as a general rule, those where persons with disabilities are subject to less favourable treatment than persons who do not have disabilities, the protection granted by that directive would be diminished if it were to be considered that a situation where such discrimination occurs within a group of persons, all of whom have disabilities, is, by definition, not covered by the prohibition of discrimination laid down thereby. Thus, the principle of equal treatment enshrined in Directive 2000/78 is intended to protect a worker who has a disability against any discrimination on the basis of that disability, not only as compared with workers who do not have disabilities but also as compared with other workers who have disabilities.

The Court goes on to assess whether the practice at issue may constitute discrimination on the grounds of disability as prohibited by Directive 2000/78. In that regard it indicates, in the first place, that, where an employer treats a worker less favourably than another of his or her workers in a comparable situation and where it is established, having regard to all the relevant circumstances of the case, that that unfavourable treatment is based on the former worker's disability, inasmuch as it is based on a criterion which is inextricably linked to that disability, such treatment is contrary to the prohibition of direct discrimination set out in Article 2(2)(a) of Directive 2000/78. As the practice at issue has given rise to a difference in treatment between two categories of workers with disabilities who are in a comparable situation, it is therefore for the referring court to determine whether the temporal condition imposed by the employer for receiving the allowance in question, namely the submission of the disability certificate after a date chosen by that employer, constitutes a criterion which is inextricably linked to the disability of the workers who were refused that allowance. The Court of Justice notes in that regard that, in the present case, the employer does not seem to have permitted workers with disabilities who had already submitted their disability certificates before that date to resubmit them or to file new ones, so that that practice may have made it impossible for a clearly identified group of workers, consisting of all the workers with disabilities whose disabled status was necessarily known to the employer when that practice was introduced – those workers having previously formalised that status by submitting disability certificates – to satisfy that temporal condition. Accordingly, such a practice may constitute direct discrimination where it is such as to make it impossible for a clearly identified group of workers, consisting of all the workers with disabilities whose disabled status was necessarily known to the employer when that practice was introduced, to satisfy that temporal condition.

In the second place, the Court of Justice emphasises that, should the referring court find that the difference in treatment in question stems from an apparently neutral practice, it will be for that court, in order to determine whether that practice constitutes indirect discrimination for the purposes of Article 2(2)(b) of Directive 2000/78, to ascertain whether it has had the effect of placing persons who have certain disabilities at a particular disadvantage as compared with persons who have other disabilities and, in particular, whether it had the effect of putting certain workers with disabilities at a disadvantage because of the particular nature of their disabilities, including the fact that such disabilities were visible or required reasonable adjustments to be made. According to the Court, it could be held that it was primarily workers who have such disabilities who were obliged, before the date chosen by the hospital in question, to make their state of health formally known to their employer, by submitting disability certificates, whereas other workers who have disabilities of a different nature, for example because those disabilities are less serious or do not immediately require such adjustments to be made, still had a choice as to whether or not to take that step. Accordingly, a practice such as the one in question, although apparently neutral, may constitute discrimination indirectly based on disability if, without being objectively justified by a legitimate aim and without the means of achieving that aim being appropriate and necessary, which it is for the referring court to ascertain, it puts workers with disabilities at a particular disadvantage depending on the nature of their disabilities.

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 judgment is published on the CURIA website on the day of delivery.

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