

## Too big for working as a day nanny?

### *Charter Articles of relevance*

- Article 15 – Freedom to choose an occupation and right to engage in work
- Art 20 Equality before the law
- Art 21 Non-discrimination
- Article 51 para. 1 – Field of application
- Article 52 para. 1 – Scope and interpretation of rights and principles

### *Findings of the Court of Justice of the European Union*

The CJEU was asked to answer the following questions:

- whether EU law must be interpreted as laying down a general principle of non-discrimination on grounds of obesity as such as regards employment and occupation.
- whether Directive 2000/78 must be interpreted as meaning that the obesity of a worker can constitute a 'disability' within the meaning of that Directive and, if so, what are the criteria which decide whether an obese worker may avail of the protection afforded by that Directive against disability-based discrimination.

#### **First Question:**

According to the case-law of the Court, the fundamental rights which form an integral part of the general principles of EU law include the general principle of non-discrimination. That principle is therefore binding on Member States where the national situation at issue in the main proceedings falls within the scope of EU law.

In that connection, it should be stated that no provision – neither primary law nor secondary law prohibits discrimination on grounds of obesity as such. In particular, Directive 2000/78 does not mention obesity as a ground for discrimination.

The answer to the first question is that EU law must be interpreted as not laying down a general principle of non-discrimination on grounds of obesity as such as regards employment and occupation.



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## Second Question:

As a preliminary point, it should be recalled that the purpose of Directive 2000/78, as stated in Article 1 thereof, is to lay down a general framework for combating discrimination, as regards employment and occupation, on any of the grounds referred to in that article, which include disability.

The Court held that the concept of ‘**disability**’ 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.

That concept of ‘disability’ 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.

It should be noted that obesity does not in itself constitute a ‘disability’ within the meaning of Directive 2000/78, on the ground that, by its nature, it does not necessarily entail the existence of a limitation as referred to in paragraph 53 of this judgment.

However, in the event that, under given circumstances, the obesity of the worker concerned entails a limitation which results in particular from physical, mental or psychological impairments that 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, obesity can be covered by the concept of ‘disability’ within the meaning of Directive 2000/78

In the present case, as has been observed by the referring court, it is undisputed that Mr Kaltoft was obese for the entire period he was employed.

Directive 2000/78 must be interpreted as meaning that the obesity of a worker constitutes a ‘disability’ within the meaning of that Directive where it entails a limitation resulting 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.

It is for the national court to determine whether, in the main proceedings, those conditions are met.