

To big for working as a day nanny?

Facts of the case

In November 1996 a Danish municipality hired Mr. Kristensen as a childminder with a fixed-term contract to look after children in his own home. The contract was converted into a permanent contract in 1998. Mr. Kristensen performed that function for approximately 15 years.

During the entire period during which the Danish municipality employed Mr. Kristensen, he was 'obese' within the meaning of the definition of the World Health Organization (WHO), obesity being registered under code E66 of the 'International Statistical Classification of Diseases and Related Health Problems' of the WHO (ICD10).

Mr. Kristensen attempted to lose weight and the Municipality, as part of its health policy, provided him financial assistance between January 2008 and January 2009 in order for him to attend fitness and physical training sessions. Mr. Kristensen lost weight, which he subsequently regained, as in his previous attempts.

In March 2010, Mr. Kristensen resumed his work as a childminder after having taken leave of one year, due to family reasons. Thereafter, he received several unexpected visits from the head of the childminders, who wished to inquire into his weight loss. During those visits, the head of the childminders observed that Mr. Kristensen's weight had remained virtually unchanged.

Owing to the decrease in the number of children in the municipality, Mr. Kristensen, from the 38th week of 2010, had only three children to take care of instead of four, the number for which he had received authorization.

The education inspectors within the municipality were requested to nominate a childminder for dismissal and the head of the childminders, in view of the proposals received, decided that Mr. Kristensen would be that person.

On 1 November 2010, Mr. Kristensen was informed by telephone that the municipality was planning to dismiss him, which resulted in the carrying out of a hearing procedure for the dismissal of public sector employees.

The same day, during a meeting with the head of the childminders and in the presence of the staff representative, Mr. Kristensen asked why he was the only childminder to be dismissed. The parties in the main proceedings agree that Mr. Kristensen's obesity was mentioned during that meeting. However, they are in disagreement over how his obesity



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was mentioned during the meeting and on the extent to which it had been a factor in the decision-making process leading to his dismissal.

With a letter from fourth of November 2010, the municipality formally informed Mr. Kristensen that they wanted to dismiss him. He was the only childminder to be dismissed on the ground of an alleged decline in workload.

Questions

- (1) Is the Charter applicable in this case?
 - (a) Which aspects are decisive for answering that question?
 - (b) Which arguments can be found in favour or against the applicability of the Charter?
- (2) Which articles of the Charter do you consider relevant?
 - (a) Do you see a violation of those articles?
 - (b) If so, which reasons for justification could be found?
 - (c) Could these reasons be invoked successfully?
- (3) Would the application of Charter rights lead to a different outcome than if you do not consider them?