



Key Issues: Social Policy – equal treatment – disability

Case: Carlos Enrique Ruiz Conejero v Ferroser Servicios Auxiliares SA, Ministerio Fiscal,

Reference: Case C-270/16, CJEU (Third Chamber), 18 January 2018

Legislation: Directive 2000/78/EC

On 2 July 1993, Mr Ruiz Conejero was hired to work as a cleaning agent in a hospital in Cuenca (Spain), which is in the region of Castile-La Mancha (Spain). He was last employed in that post by the cleaning company Ferroser Servicios Auxiliares. Mr Ruiz Conejero had worked for this company without incident, as he had for the companies that had employed him previously. He never had any work-related problems nor had he been disciplined.

The Spanish authorities recognised that Mr Ruiz Conejero had a disability. The degree of his incapacity was set at 37%, of which 32% related to physical disability, characterised by disease of the endocrine-metabolic system (obesity) and functional limitation of the spine, the other 5% being made up of additional social factors. Between 2014 and 2015, Mr Ruiz Conejero was unfit for work during the following periods:

- from 1 to 17 March 2014 for acute pain requiring hospitalisation from 26 February to 1 March 2014;
- from 26 to 31 March 2014 for dizziness/nausea;
- from 26 June to 11 July 2014 for lumbago;
- from 9 to 12 March 2015 for lumbago;
- from 24 March to 7 April 2015 for lumbago; and
- from 20 to 23 April 2015 for dizziness/nausea.

According to the medical diagnosis, these health problems were caused by degenerative joint disease and polyarthrosis, aggravated by Mr Ruiz Conejero's obesity. The medical services concluded that those problems were the result of the diseases which led to the recognition of Mr Ruiz Conejero's disability. Mr Ruiz Conejero informed his employer, within the period and in the manner prescribed, of all the absences, by providing the relevant medical certificates confirming the reason for, and duration of, those absences.

By letter of 7 July 2015, Ferroser Servicios Auxiliares informed Mr Ruiz Conejero of his dismissal on the ground that the cumulative duration of his absences, albeit justified, had exceeded the limits laid down in the relevant Spanish law, namely, 20% of working time during March and April 2015, and that during the previous 12 months he had been absent for 5% of working time.

Mr Ruiz Conejero challenged the dismissal decision before the Juzgado de lo Social No 1 de Cuenca (Social Court No 1, Cuenca, Spain). Mr Ruiz Conejero does not dispute the truth or the accuracy of those absences from work or what they amount to in percentage terms. However, he claims that there is a direct link between those absences and his disability. He seeks annulment of his dismissal on the ground that it constitutes discrimination based on disability.

The referring court notes that Mr Ruiz Conejero of his own free will refused periodic medical examinations organised by the employer's mutual insurance company, with the result that his employer did not know that Mr Ruiz Conejero had a disability at the time he was dismissed. According to the referring court, workers with disabilities are more exposed to the risk of being dismissed under Spanish law than other workers, whether the employer has knowledge of the disability or not. There is, therefore, a difference in treatment involving indirect discrimination based on disability within the meaning of Article 2(2)(b) of Directive 2000/78 and that difference in treatment cannot be objectively justified by a legitimate aim as required by Article 2(2)(b)(i).

In those circumstances, the Juzgado de lo Social No 1 de Cuenca (Social Court No 1, Cuenca) decided to stay the proceedings and to refer a question to the Court of Justice EU (CJEU) for a preliminary ruling on the interpretation of Directive 2000/78.

Consideration by CJEU

The CJEU noted that the purpose of Directive 2000/78 is to lay down a general framework for combating, as regards employment and occupation, discrimination based on any of the grounds referred to in that article, which include disability. In accordance with Article 3(1)(c) of that directive, the latter applies, within the limits of the areas of competence conferred on the European Union, to all persons, in both the public and private sectors, in relation to, inter alia, the conditions governing dismissal.

According to the CJEU's case-law, the concept of '*disability*' within the meaning of Directive 2000/78 has to be understood as referring to a limitation of capacity 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.

In the present case, the referring court states that Mr Ruiz Conejero was recognised as having a disability, within the meaning of national law, before his dismissal. In that regard, the court notes that he suffers from a disease of the endocrine-metabolic system, namely, obesity, and from functional limitation of the spine. However, the CJEU noted that the fact that Mr Ruiz Conejero is recognised as having a disability within the meaning of national law does not necessarily indicate that he has a disability within the meaning of Directive 2000/78.

In that regard, in order to establish whether, in the case in the main proceedings, Mr Ruiz Conejero's situation falls within the scope of Directive 2000/78, it is for the referring court to determine whether his limitation in capacity must be regarded as a disability within the meaning of that directive.

The CJEU held that:

Article 2(2)(b)(i) of Council Directive 2000/78/EC of 27 November 2000 must be interpreted as precluding national legislation under which an employer may dismiss a worker on the grounds of his intermittent absences from work, even if justified, in a situation where those absences are the consequence of sickness attributable to a disability suffered by that worker, unless that legislation, while pursuing the legitimate aim of combating absenteeism, does not go beyond what is necessary in order to achieve that aim, which is a matter for the referring court to assess.

Why is this decision important?

Some employers may have a simplistic view on what is meant by “disability”. The increasing rates of obesity in the developed world mean that employers are increasingly having to deal with employees who suffer from a disability arising from their condition. This judgment highlights the need to consider the EU primary legislation when considering national legislation in this area.

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