JUDGMENT OF THE COURT (Grand Chamber)

11 July 2006 *

In Case C-13/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Juzgado de lo Social n° 33 de Madrid (Spain), made by decision of 7 January 2005, received at the Court on 19 January 2005, in the proceedings

Sonia Chacón Navas

v

Eurest Colectividades SA,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Schiemann and J. Makarczyk, Presidents of Chambers, J.-P. Puissochet, N. Colneric (Rapporteur), K. Lenaerts, P. Kūris, E. Juhász, E. Levits and A. Ó Caoimh, Judges,

* Language of the case: Spanish.

Advocate General: L.A. Geelhoed,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Eurest Colectividades SA, by R. Sanz García-Muro, abogada,

— the Spanish Government, by E. Braquehais Conesa, acting as Agent,

— the Czech Government, by T. Boček, acting as Agent,

— the German Government, by M. Lumma and C. Schulze-Bahr, acting as Agents,

— the Netherlands Government, by H. G. Sevenster, acting as Agent,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the United Kingdom Government, by C. White, acting as Agent, and T. Ward, Barrister,

— the Commission of the European Communities, by I. Martinez del Peral Cagigal and D. Martin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 March 2006,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation, as regards discrimination on grounds of disability, of 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) and, in the alternative, possible prohibition of discrimination on grounds of sickness.

2 The reference was made in the course of proceedings between Ms Chacón Navas and Eurest Colectividades SA ('Eurest') regarding her dismissal whilst she was on leave of absence from her employment on grounds of sickness.

Legal and regulatory context

Community law

3 The first paragraph of Article 136 EC reads:

'The Community and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.'

4 Article 137(1) and (2) EC confers on the Community the power to support and complement the activities of the Member States with a view to achieving the objectives of Article 136 EC, inter alia in the fields of integrating persons excluded from the labour market and combating social exclusion.

5 Directive 2000/78 was adopted on the basis of Article 13 EC in the version prior to the Treaty of Nice, which provides:

'Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may

take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.'

6 Article 1 of Directive 2000/78 provides:

'The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.'

7 That directive states in its recitals:

'(11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.

(12) To this end, any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community. ...

...

(16) The provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability.

(17) This Directive does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training, without prejudice to the obligation to provide reasonable accommodation for people with disabilities.

...

(27) In its Recommendation 86/379/EEC of 24 July 1986 on the employment of disabled people in the Community [OJ 1986 L 225, p. 43], the Council established a guideline framework setting out examples of positive action to promote the employment and training of disabled people, and in its Resolution of 17 June 1999 on equal employment opportunities for people with disabilities, affirmed the importance of giving specific attention inter alia to recruitment, retention, training and lifelong learning with regard to disabled persons.'

8 Article 2(1) and (2) of Directive 2000/78 provides:

'1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or

(ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.'

9 Under Article 3 of that directive:

'1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

...

(c) employment and working conditions, including dismissals and pay;

...'

10 Article 5 of that directive reads:

'In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.'

11 The Community Charter of the Fundamental Social Rights of Workers, adopted at the meeting of the European Council held at Strasbourg on 9 December 1989, to which Article 136(1) EC refers, states in point 26:

'All disabled persons, whatever the origin and nature of their disablement, must be entitled to additional concrete measures aimed at improving their social and professional integration.

These measures must concern, in particular, according to the capacities of the beneficiaries, vocational training, ergonomics, accessibility, mobility, means of transport and housing.'

National legislation

12 Under Article 14 of the Spanish Constitution:

'Spanish people are equal before the law; there may be no discrimination on grounds of birth, race, sex, religion, opinion or any other condition or personal or social circumstance.'

13 Legislative Royal Decree No 1/1995 of 24 March 1995 approving the amended text of the Workers' Statute (Estatuto de los Trabajadores, BOE No 75 of 29 March 1995, p. 9654; 'the Workers' Statute') distinguishes between unlawful dismissal and void dismissal.

14 Article 55(5) and (6) of the Workers' Statute provides:

'5. Any dismissal on one of the grounds of discrimination prohibited by the Constitution or by law or occurring in breach of the fundamental rights and public freedoms of workers shall be void.

...

6. Any dismissal which is void shall entail the immediate reinstatement of the worker, with payment of unpaid wages or salary.'

15 It follows from Article 56(1) and (2) of the Workers' Statute that, in the event of unlawful dismissal, save where the employer decides to reinstate the worker, he loses his job but receives compensation.

16 As regards the prohibition of discrimination in employment relationships, Article 17 of the Workers' Statute, as amended by Law 62/2003 of 30 December 2003 laying down fiscal, administrative and social measures (BOE No 313 of 31 December 2003, p. 46874), which is intended to transpose Directive 2000/78 into Spanish law, provides:

'1. Regulatory provisions, clauses in collective agreements, individual agreements, and unilateral decisions by an employer, which involve direct or indirect unfavourable discrimination on grounds of age or disability, or positive or unfavourable discrimination in employment, or with regard to remuneration, working hours, and other conditions of employment based on sex, race, or ethnic origin, civil status, social status, religion or beliefs, political opinions, sexual orientation, membership or lack of membership of trade unions or compliance with their agreements, the fact of being related to other workers in the undertaking, or language within the Spanish State, shall be deemed void and ineffective.

...'

The main proceedings and the questions referred for a preliminary ruling

17 Ms Chacón Navas was employed by Eurest, an undertaking specialising in catering. On 14 October 2003 she was certified as unfit to work on grounds of sickness and, according to the public health service which was treating her, she was not in a position to return to work in the short term. The referring court provides no information about Ms Chacón Navas' illness.

18 On 28 May 2004 Eurest gave Ms Chacón Navas written notice of her dismissal, without stating any reasons, whilst acknowledging that the dismissal was unlawful and offering her compensation.

19 On 29 June 2004 Ms Chacón Navas brought an action against Eurest, maintaining that her dismissal was void on account of the unequal treatment and discrimination to which she had been subject, stemming from the fact that she had been on leave of absence from her employment for eight months. She sought an order that Eurest reinstate her in her post.

20 The referring court points out that, in the absence of any other claim or evidence in the file, it follows from the reversal of the burden of proof that Ms Chacón Navas must be regarded as having been dismissed solely on account of the fact that she was absent from work because of sickness.

21 The referring court observes that, according to Spanish case-law, there are precedents to the effect that this type of dismissal is classified as unlawful rather than void, since, in Spanish law, sickness is not expressly referred to as one of the grounds of discrimination prohibited in relationships between private individuals.

22 Nevertheless, the referring court observes that there is a causal link between sickness and disability. In order to define the term 'disability', it is necessary to turn to the International Classification of Functioning, Disability and Health (ICF) drawn up by the World Health Organisation. It is apparent from this that 'disability' is a generic term which includes defects, limitation of activity and restriction of participation in social life. Sickness is capable of causing defects which disable individuals.

23 Given that sickness is often capable of causing an irreversible disability, the referring court takes the view that workers must be protected in a timely manner under the prohibition of discrimination on grounds of disability. Otherwise, the protection intended by the legislature would, in large measure, be nullified, because it would thus be possible to implement uncontrolled discriminatory practices.

24 Should it be concluded that disability and sickness are two separate concepts and that Community law does not apply directly to sickness, the referring court suggests that it should be held that sickness constitutes an identifying attribute that is not specifically cited which should be added to the ones in relation to which Directive 2000/78 prohibits discrimination. This follows from a joint reading of Articles 13 EC, 136 EC and 137 EC, and Article II-21 of the draft Treaty establishing a Constitution for Europe.

25 It was in those circumstances that the Juzgado de lo Social No 33 de Madrid decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does Directive 2000/78, in so far as Article 1 thereof lays down a general framework for combating discrimination on the grounds of disability, include within its protective scope a ... [worker] who has been dismissed by her employer solely because she is sick?

(2) In the alternative, if it should be concluded that sickness does not fall within the protective framework which Directive 2000/78 lays down against discrimination on grounds of disability and the first question is answered in the negative, can sickness be regarded as an identifying attribute in addition to the ones in relation to which Directive 2000/78 prohibits discrimination?'

The admissibility of the reference for a preliminary ruling

26 The Commission casts doubt on the admissibility of the questions referred on the ground that the facts described in the order for reference lack precision.

27 In this respect, it must be observed that despite the absence of any indication of the nature and possible course of Ms Chacón Navas' sickness, the Court has enough information to enable it to give a useful answer to the questions referred.

28 It is apparent from the order for reference that Ms Chacón Navas, who was certified as unfit for work on grounds of sickness and was not in a position to return to work in the short term, was, according to the referring court, dismissed solely on account of the fact that she was absent from work because of sickness. It is also apparent from that order that the referring court takes the view that there is a causal link between sickness and disability and that a worker in the situation of Ms Chacón Navas must be protected under the prohibition of discrimination on grounds of disability.

29 The question principally referred concerns in particular the interpretation of the concept of 'disability' for the purpose of Directive 2000/78. The Court's interpretation of that concept is intended to enable the referring court to decide whether Ms Chacón Navas was, at the time of her dismissal, on account of her sickness, a person with a disability for the purpose of that directive who enjoyed the protection provided for in Article 3(1)(c) thereof.

30 The question referred in the alternative relates to sickness as an 'identifying attribute' and therefore concerns any type of sickness.

31 Eurest maintains that the reference for a preliminary ruling is inadmissible since the Spanish courts, in particular the Tribunal Supremo, have already ruled, in the light of Community legislation, that the dismissal of a worker who has been certified as unfit to work on grounds of sickness does not as such amount to discrimination. However, the fact that a national court has already interpreted Community legislation cannot render inadmissible a reference for a preliminary ruling.

32 As regards Eurest's argument that it dismissed Ms Chacón Navas without reference to the fact that she was absent from work on grounds of sickness because, at that time, her services were no longer necessary, it must be recalled that, in proceedings under Article 234 EC, which are based on a clear separation of functions between the national courts and the Court of Justice, any assessment of the facts in the case is a matter for the national court. Similarly, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the

Court. Consequently, where the questions submitted concern the interpretation of Community law, the Court is in principle bound to give a ruling (see, inter alia, Case C-326/00 *IKA* [2003] ECR I-1703, paragraph 27, and Case C-145/03 *Keller* [2005] ECR I-2529, paragraph 33).

33 Nevertheless, the Court has also stated that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court, in order to confirm its own jurisdiction (see, to that effect, Case 244/80 *Foglia* [1981] ECR 3045, paragraph 21). The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39, and Case C-35/99 *Arduino* [2002] ECR I-1529, paragraph 25).

34 Since none of those conditions have been satisfied in this case, the reference for a preliminary ruling is admissible.

The questions

The first question

35 By its first question, the referring court is asking, in essence, whether the general framework laid down by Directive 2000/78 for combating discrimination on the grounds of disability confers protection on a person who has been dismissed by his employer solely on account of sickness.

36 As is clear from Article 3(1)(c) of Directive 2000/78, that directive applies, within the limits of the areas of competence conferred on the Community, to all persons, as regards inter alia dismissals.

37 Within those limits, the general framework laid down by Directive 2000/78 for combating discrimination on grounds of disability therefore applies to dismissals.

38 In order to reply to the question referred, it is necessary, first, to interpret the concept of 'disability' for the purpose of Directive 2000/78 and, second, to consider to what extent disabled persons are protected by that directive as regards dismissal.

Concept of 'disability'

39 The concept of 'disability' is not defined by Directive 2000/78 itself. Nor does the directive refer to the laws of the Member States for the definition of that concept.

40 It follows from the need for uniform application of Community law and the principle of equality that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the Community, having regard to the context of the provision and the objective pursued by the legislation in question (see, inter alia, Case 327/82 *Ekro* [1984] ECR 107, paragraph 11, and Case C-323/03 *Commission* v *Spain* [2006] ECR I-2161, paragraph 32).

41 As is apparent from Article 1, the purpose of Directive 2000/78 is to lay down a general framework for combating discrimination based on any of the grounds referred to in that article, which include disability, as regards employment and occupation.

42 In the light of that objective, the concept of 'disability' for the purpose of Directive 2000/78 must, in accordance with the rule set out in paragraph 40 of this judgment, be given an autonomous and uniform interpretation.

43 Directive 2000/78 aims to combat certain types of discrimination as regards employment and occupation. In that context, the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life.

44 However, by using the concept of 'disability' in Article 1 of that directive, the legislature deliberately chose a term which differs from 'sickness'. The two concepts cannot therefore simply be treated as being the same.

45 Recital 16 in the preamble to Directive 2000/78 states that the 'provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability'. The importance which the Community legislature attaches to measures for adapting the workplace to the disability demonstrates that it envisaged situations in which participation in professional life is hindered over a long period of time. In order for the limitation to fall within the concept of 'disability', it must therefore be probable that it will last for a long time.

46 There is nothing in Directive 2000/78 to suggest that workers are protected by the prohibition of discrimination on grounds of disability as soon as they develop any type of sickness.

47 It follows from the above considerations that a person who has been dismissed by his employer solely on account of sickness does not fall within the general framework laid down for combating discrimination on grounds of disability by Directive 2000/78.

Protection of disabled persons as regards dismissal

48 Unfavourable treatment on grounds of disability undermines the protection provided for by Directive 2000/78 only in so far as it constitutes discrimination within the meaning of Article 2(1) of that directive.

49 According to Recital 17 in the preamble to Directive 2000/78, that directive does not require the recruitment, promotion or maintenance in employment of an individual who is not competent, capable and available to perform the essential functions of the post concerned, without prejudice to the obligation to provide reasonable accommodation for people with disabilities.

50 In accordance with Article 5 of Directive 2000/78, reasonable accommodation is to be provided in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities. That provision states that this means that

employers are to take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, unless such measures would impose a disproportionate burden on the employer.

51 The prohibition, as regards dismissal, of discrimination on grounds of disability contained in Articles 2(1) and 3(1)(c) of Directive 2000/78 precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post.

52 It follows from all the above considerations that the answer to the first question must be that:

— a person who has been dismissed by his employer solely on account of sickness does not fall within the general framework laid down for combating discrimination on grounds of disability by Directive 2000/78;

— the prohibition, as regards dismissal, of discrimination on grounds of disability contained in Articles 2(1) and 3(1)(c) of Directive 2000/78 precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post.

The second question

53 By its second question, the referring court is asking whether sickness can be regarded as a ground in addition to those in relation to which Directive 2000/78 prohibits discrimination.

54 In this connection, it must be stated that no provision of the EC Treaty prohibits discrimination on grounds of sickness as such.

55 Article 13 EC and Article 137 EC, read in conjunction with Article 136 EC, contain only the rules governing the competencies of the Community. Moreover, Article 13 EC does not refer to discrimination on grounds of sickness as such in addition to discrimination on grounds of disability, and cannot therefore even constitute a legal basis for Council measures to combat such discrimination.

56 It is true that fundamental rights which form an integral part of the general principles of Community 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 Community law (see, to that effect, Case C-442/00 *Rodríguez Caballero* [2002] ECR I-11915, paragraphs 30 and 32, and Case C-112/00 *Schmidberger* [2003] ECR I-5659, paragraph 75, and the case-law cited). However, it does not follow from this that the scope of Directive 2000/78 should be extended by analogy beyond the discrimination based on the grounds listed exhaustively in Article 1 thereof.

57 The answer to the second question must therefore be that sickness cannot as such be regarded as a ground in addition to those in relation to which Directive 2000/78 prohibits discrimination.

Costs

58 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **A person who has been dismissed by his employer solely on account of sickness does not fall within the general framework laid down for combating discrimination on grounds of disability by Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.**

2. **The prohibition, as regards dismissal, of discrimination on grounds of disability contained in Articles 2(1) and 3(1)(c) of Directive 2000/78 precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post.**

3. **Sickness cannot as such be regarded as a ground in addition to those in relation to which Directive 2000/78 prohibits discrimination.**

[Signatures]