

Judgment of the Court (Third Chamber) of 1 December 2016 (request for a preliminary ruling from the Juzgado de lo Social No 33 de Barcelona — Spain) — Mohamed Daouidi v Bootes Plus SL, Fondo de Garantía Salarial, Ministerio Fiscal

(Case C-395/15) ⁽¹⁾

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment in employment and occupation — Articles 1 to 3 — Prohibition of all discrimination based on a disability — Whether a ‘disability’ exists — Concept of ‘long-term physical, mental, intellectual or sensory impairments’ — Charter of Fundamental Rights of the European Union — Articles 3, 15, 21, 30, 31, 34 and 35 — Dismissal of a worker who is temporarily unable to work, within the definition of national law, for an indeterminate period of time)

(2017/C 030/08)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 33 de Barcelona

Parties to the main proceedings

Applicant: Mohamed Daouidi

Defendants: Bootes Plus SL, Fondo de Garantía Salarial, Ministerio Fiscal

Operative part of the judgment

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that:

- the fact that the person concerned finds himself or herself in a situation of temporary incapacity for work, as defined in national law, for an indeterminate amount of time, as the result of an accident at work, does not mean, in itself, that the limitation of that person's capacity can be classified as being ‘long-term’, within the meaning of the definition of ‘disability’ laid down by that directive, read in the light of the United Nations Convention on the Rights of Persons with Disabilities, which was approved on behalf of the European Community by Council Decision 2010/48/EC of 26 November 2009;
- the evidence which makes it possible to find that such a limitation is ‘long-term’ includes the fact that, at the time of the allegedly discriminatory act, the incapacity of the person concerned does not display a clearly defined prognosis as regards short-term progress or the fact that that incapacity is likely to be significantly prolonged before that person has recovered; and
- in the context of the verification of that ‘long-term’ nature, the referring court must base its decision on all of the objective evidence in its possession, in particular on documents and certificates relating to that person's condition, established on the basis of current medical and scientific knowledge and data.

⁽¹⁾ OJ C 354, 26.10.2015, p. 19.