

what is at stake for the claimant and for the protection of the environment, the complexity of the relevant law and procedure, the potentially frivolous nature of the claim at its various stages, and the existence of a national legal aid scheme or a costs protection regime.

By contrast, the fact that a claimant has not been deterred, in practice, from asserting his claim is not of itself sufficient to establish that the proceedings are not prohibitively expensive for him.

Lastly, that assessment cannot be conducted according to different criteria depending on whether it is carried out at the conclusion of first-instance proceedings, an appeal or a second appeal.

⁽¹⁾ OJ C 226, 30.7.2011.

Judgment of the Court (Second Chamber) of 11 April 2013 (request for a preliminary ruling from the Sø- og Handelsret, Denmark) — HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) v HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S, in liquidation (C-337/11)

(Joined Cases C-335/11 and C-337/11) ⁽¹⁾

(Social policy — United Nations Convention on the Rights of Persons with Disabilities — Directive 2000/78/CE — Equal treatment in employment and occupation — Articles 1, 2 and 5 — Difference in treatment on grounds of disability — Dismissal — Existence of a disability — Employee absent because of disability — Obligation to provide accommodation — Part-time work — Length of the period of notice)

(2013/C 156/08)

Language of the case: Danish

Referring court

Sø- og Handelsret

Parties to the main proceedings

Applicants: HK Danmark, acting on behalf of Jette Ring (C-335/11), HK Danmark, acting on behalf of Lone Skouboe Werge (C-337/11)

Defendant: Dansk almennyttigt Boligselskab DAB (C-335/11), Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S, in liquidation (C-337/11)

Re:

Requests for a preliminary ruling — Sø- og Handelsretten — Interpretation of Articles 1, 2 and 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment and occupation (OJ 2000

L 303, p. 16) and the judgment of the Court in Case C-13/05 *Chacón Navas* — Prohibition of discrimination on grounds of disability — National legislation under which an employer can dismiss an employee who has been absent because of illness, with his salary being paid, for 120 days during 12 consecutive months — Existence of a disability — Persons having a long-term reduction in their functions not requiring particular equipment and consisting only in an incapacity to work full time — Reasonable accommodation for persons with disabilities

Operative part of the judgment

1. The concept of 'disability' in Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as including a condition caused by an illness medically diagnosed as curable or incurable where that illness entails a limitation which results in particular from 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, and the limitation is a long-term one. The nature of the measures to be taken by the employer is not decisive for considering that a person's state of health is covered by that concept.
2. Article 5 of Directive 2000/78 must be interpreted as meaning that a reduction in working hours may constitute one of the accommodation measures referred to in that article. It is for the national court to assess whether, in the circumstances of the main proceedings, a reduction in working hours, as an accommodation measure, represents a disproportionate burden on the employer.
3. Directive 2000/78 must be interpreted as precluding national legislation under which an employer can terminate the employment contract with a reduced period of notice if the disabled worker concerned has been absent because of illness, with his salary being paid, for 120 days during the previous 12 months, where those absences are the consequence of the employer's failure to take the appropriate measures in accordance with the obligation to provide reasonable accommodation laid down in Article 5 of that directive.
4. Directive 2000/78 must be interpreted as precluding national legislation under which an employer can terminate the employment contract with a reduced period of notice if the disabled worker concerned has been absent because of illness, with his salary being paid, for 120 days during the previous 12 months, where those absences are the consequence of his disability, unless that legislation, as well as pursuing a legitimate aim, does not go beyond what is necessary to achieve that aim, that being for the referring court to assess.

⁽¹⁾ OJ C 269, 10.9.2011.