



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 82/13

Luxembourg, 4 July 2013

Judgment in Case C-312/11
Commission v Italy

Member States must require all employers to adopt practical and effective measures for all persons with disabilities

By not introducing such a requirement, Italy has failed to fulfil its obligations under EU law

The purpose of the United Nations Convention on the Rights of Persons with Disabilities – approved on behalf of the EU by a decision of the Council of the European Union¹ – is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

The European Directive on equal treatment in employment² is based on the belief that discrimination based on disability may undermine the achievement of the objectives of the Treaty, in particular the attainment of a high level of employment and social protection, raising the quality of life, economic and social cohesion and solidarity, and the free movement of persons. Therefore, that directive lays down a general framework for combating that kind of discrimination as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

In order to guarantee equal treatment of persons with disabilities, that directive requires, *inter alia*, employers to take appropriate measures, where needed in a particular case, to enable such persons to have access to, participate in, or advance in employment, and to undergo training, unless such measures would impose a disproportionate burden on the employer. That burden will not be disproportionate when it is sufficiently remedied by State policy on persons with disabilities.

Italian law includes a number of legislative measures on the subject of assistance for, social integration of and the rights of persons with disabilities and their right to work.

The Commission has brought an action for failure to fulfil obligations before the Court of Justice, claiming that Italy has transposed the directive into its national law without ensuring that the guarantees and adjustments provided for regarding the treatment of persons with disabilities in the workplace are to apply to all persons with disabilities, all employers, and all aspects of the employment relationship. Furthermore, application of the Italian legislation on that subject is dependent on the adoption of further measures by the local authorities or the conclusion of special agreements between those authorities and employers and thus does not confer upon persons with disabilities rights which could be directly relied on before a court.

In its judgment delivered today, the Court indicates that, while it is true that **the concept of a ‘disability’** is not directly defined in the directive, it should be understood, on the basis of the **UN Convention**, as referring to **a limitation, resulting *inter alia* from a long-term physical, mental, or psychological impairment**, which in interaction with various barriers may hinder a person’s full and effective participation in the labour force on an equal basis with other workers.

The UN Convention then advocates a broad interpretation of the concept of **‘reasonable accommodation’**, by which it means the adjustments to be made, where needed in a particular

¹ Council Decision 2010/48/EC of 26 November 2009 (OJ 2010 L 23, p. 35).

² 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).

case, to ensure to a person with disabilities the enjoyment or exercise of all human rights and fundamental freedoms on an equal basis with other workers.

Moreover, the Court has already held³ that that concept refers to the elimination of the barriers that hinder the full and effective participation of persons with disabilities in professional life on an equal basis with other workers.

Therefore, Member States must create an **obligation for employers to adopt effective and practical measures** (adapting premises, equipment, patterns of working time, the distribution of tasks), taking into account each individual situation, which will enable any person with a disability to have access to, participate in, or advance in employment, and to undergo training, without imposing a disproportionate burden on the employer.

The Court emphasises that **that obligation covers all employers**. It is not sufficient for Member States to provide support and incentives: they must require all employers to adopt effective and practical measures, where needed in particular cases.

Upon examining the various measures adopted by Italy for the integration of persons with disabilities into the labour force, the Court finds that those measures, even when assessed as a whole, do not require all employers to adopt effective and practical measures, where needed in particular cases, for all persons with disabilities, covering different aspects of work and enabling them to have access to, participate in, or advance in employment, and to undergo training.

Accordingly, Italy has failed to fulfil its obligations.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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³ Joined Cases [C-335/11](#) and [C-337/11](#).