factual assessment, it is a question to be determined by the referring court. It must make its decision on all of the objective evidence before it, established on the basis of current medical and scientific knowledge and data. The court may find a limitation is long-term (i) if, at the time of the allegedly discriminatory act, it is not clear how long the person is likely to be incapacitated for or (ii) if the person is likely to be incapacitated for a long time.

Ruling

The fact that a person is temporarily incapacitated for work, as defined in national law, for an indeterminate length 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 'long-term', within the meaning of the definition of 'disability' laid down by the Directive, read in 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.

It is possible to find such a limitation 'long-term' either if, at the time of the allegedly discriminatory act, there is no clearly-defined prognosis of short-term progress or if the incapacity is likely to be significantly prolonged before the person recovers.

The referring court must base its decision on all relevant evidence in its possession relating to that person's condition, in particular documents and certificates based on current medical and scientific knowledge and data.

ECJ 15 December 2016, joined cases C-401/15 to C-403/15 (Depesme), Free movement, social insurance

Noémie Depesme (C-401/15), Saïd Kerrou (C-401/15), Adrien Kauffmann (C-402/15) and Maxime Lefort (C-403/15) – v – Ministre de l'Enseignement supérieur et de la Recherche, Luxembourgian case

Summary

These cases concern the refusal by Luxembourg to grant financial aid to students studying in Luxembourg whilst living in France or Belgium, when they would be entitled to such aid under Regulation 492/2011 on free movement (pursuant to Article 45 TFEU), based on their family circumstances, were it not that the person employed in Luxembourg was not their father but their stepfather. The ECJ found in favour of the students.

Ruling

Article 45 TFEU and Article 7(2) of Regulation (EU) No 492/2011 […] must be interpreted as meaning that a child of a frontier worker who is able to benefit indirectly from the social advantages referred to in the latter provision, such as study finance granted by a Member State to the children of workers pursuing or who have pursued an activity in that Member State, means not only a child who has a child-parent relationship with that worker, but also a child of the spouse or registered partner of that worker, where that worker supports that child. The latter requirement is the result of a factual situation, which it is for the national authorities and, if appropriate, the national courts, to assess, and it is not necessary for them to determine the reasons for that contribution or make a precise estimation of its amount.

ECJ (Grand Chamber) 21 December 2016, case C-201/15 (AGET Iraklis), Collective redundancies

Anonymi Geniki Etairia Tsimenton Iraklis (AGET Iraklis) – v – Ypourgos Ergasias, Koinonikis Asfalisis kai Koinonikis Allilengyis; intervener: Enosi Ergazomenon Tsimenton Chalkidas, Greek case

Summary

Where no agreement is reached with employee representatives on a planned collective redundancy, the employer must try to obtain permission from the Minister for Labour – who rarely gives it. The employer in this case argued successfully that this was a serious obstacle to its to freedom to establish and conduct business in Greece.

Facts

AGET Iraklis, a subsidiary of the French Lafarge group, is a producer of cement. It has three plants, one of which is in Chalkida, where it employed 236 workers.

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