



## Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

31 January 2013\*

(Request for a preliminary ruling — Article 267 TFEU — Concept of ‘national court’ — Lack of jurisdiction of the Court)

In Case C-394/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Komisia za zashtita ot diskriminatsia (Bulgaria), made by decision of 19 July 2011, received at the Court on 25 July 2011, in the proceedings

**Valeri Hariev Belov**

v

**CHEZ Elektro Balgaria AD,**

**Lidia Georgieva Dimitrova,**

**Roselina Dimitrova Kostova,**

**Kremena Stoyanova Stoyanova,**

**CHEZ Razpredelenie Balgaria AD,**

**Ivan Kovarzhchik,**

**Atanas Antonov Dandarov,**

**Irzhi Postolka,**

**Vladimir Marek,**

**Darzhavna Komisia po energiyno i vodno regulirane,**

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, acting for the President of the Fourth Chamber, J.-C. Bonichot, C. Toader, A. Prechal (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: J. Kokott,

Registrar: M. Aleksejev, Administrator,

\* Language of the case: Bulgarian.

having regard to the written procedure and further to the hearing on 11 July 2012,

after considering the observations submitted on behalf of:

- Mr Belov, by G. Chernicherska, АДВОКАТ,
- CHEZ Elektro Balgaria AD and CHEZ Razpredelenie Balgaria AD, by A. Ganev and V. Bozhilov, АДВОКАТИ,
- the Bulgarian Government, by T. Ivanov and D. Drambozova, acting as Agents,
- the European Commission, by J. Enegren and D. Roussanov, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 20 September 2012,

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Articles 2(2) and (3), 3(1)(h) and 8(1) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22), Article 3(5) of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ 2003 L 176, p. 37), recital 29 in the preamble to and Articles 1 and 13(1) of Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC (OJ 2006 L 114, p. 64), Article 3(7) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55), and Article 38 of the Charter of Fundamental Rights of the European Union.
- 2 The request has been made in proceedings seeking to establish whether the measure, consisting in placing meters to measure electricity consumption at a height of seven metres on posts situated outside houses connected to the electricity network in two areas of the City of Montana (Bulgaria) mainly inhabited by members of the Roma community, constitutes discrimination based on ethnic origin and, if so, to order the cessation of that discrimination and the payment of fines by the persons responsible.

### **Legal context**

#### *European Union law*

- 3 Article 2(2) and (3) of Directive 2000/43 provides:
  - ‘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 grounds of racial or ethnic origin;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1, when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.'

4 Article 3(1)(h) of Directive 2000/43 states:

'Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

...

(h) access to and supply of goods and services which are available to the public, including housing.'

5 Article 8(1) of that directive provides:

'Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.'

6 Article 13 of Directive 2000/43 states:

'1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.

2. Member States shall ensure that the competences of these bodies include:

- without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
- conducting independent surveys concerning discrimination,
- publishing independent reports and making recommendations on any issue relating to such discrimination.'

### *Bulgarian law*

7 Under Article 4 of the Law on protection against discrimination (Zakon za zatschita ot diskriminatsia, 'the ZZD'):

'1. All direct or indirect discrimination on grounds of ... ethnicity is prohibited ...

2. Direct discrimination is any treatment of a person based on the characteristics mentioned in subparagraph 1 which is less favourable as compared with the manner in which another person in comparable and similar conditions is, has been or would be treated.

3. Indirect discrimination consists in placing a person, on the basis of the characteristics mentioned in subparagraph 1, in a less favourable position as compared with other persons by way of a measure, criterion or an ostensibly neutral practice, unless that measure, criterion or practice is justified taking account of a legitimate objective and that the means used to achieve are appropriate and necessary.'

8 Article 9 of the ZZD provides that 'in anti-discrimination proceedings, where a party claims that he is the victim of discrimination and establishes the facts from which it may be concluded that there has been discrimination, the defendant must show that there has been no infringement of the right to equal treatment'

9 Article 37 of the ZZD states that 'it is not permitted to refuse to provide goods or services, to provide goods or services of inferior quality or on less favourable conditions on the basis of the characteristics referred to in Article 4(1).'

10 Paragraph 1 of 'Supplementary provisions' of the ZZD defines 'unfavourable treatment' as being 'any act or omission which adversely affects, directly or indirectly, rights or legitimate interests.'

11 Additionally, the ZZD contains a number of provisions relating to the Komisia za zashtita ot diskriminatsia (Commission for Protection against Discrimination 'the KZD'), for the purpose, inter alia, of setting out the composition, the duties and mode of functioning of that body.

12 In that regard, Article 47 of the ZZD states:

'The [KZD] shall:

1. record infringements of this Law or other laws on equal treatment and shall determine the person responsible for the infringement and the person concerned;
2. order the prevention and cessation of the infringement and the re-establishment of the initial situation;
3. apply the sanctions provided for and adopt coercive administrative measures;
4. give binding instructions concerning compliance with this Law or with other laws on equal treatment;
5. bring actions against administrative acts adopted contrary to this Law or other laws on equal treatment; bring legal proceedings and intervene as an interested party in cases brought under this Law or other laws on equal treatment;
6. formulate proposals and recommendations to State and local authority bodies for the prevention of discriminatory practices and for the annulment of their acts adopted contrary to this Law or other laws on equal treatment;
7. keep a public record of its decisions in force and its binding instructions;
8. give advice as to whether draft legislative acts are consistent with the legislation on the prevention of discrimination and recommend the adoption, repeal, amendment or supplementation of legislative acts;

9. provide independent assistance to victims of discrimination when they bring actions;
10. carry out independent studies on discrimination;
11. publish independent reports and make recommendations on any questions relating to discrimination;
12. exercise any other powers laid down in the legislation governing its organisation and its activity.'

13 Article 48 of the ZZD provides:

'(1) The [KZD] shall examine and decide the cases brought before it in formations determined by its President.

(2) The President of the [KZD] shall determine the permanent formation which specialises in discrimination:

1. on grounds of ethnicity or race;
2. on grounds of sex;
3. based on other characteristics referred to in Article 4(1).

...'

14 According to Article 50 of the ZZD:

'Proceedings before the [KZD] are brought:

1. on application of the persons concerned;
2. on the initiative of the [KZD];
3. by complaints from natural and legal persons or State and local authority bodies.'

15 Article 54 of the ZZD states:

'Once proceedings have been brought, the President of the [KZD] shall allocate the case to a formation, which shall appoint a rapporteur from among its members.'

16 Article 55 of the ZZD provides:

'1. The rapporteur shall open an investigation, during which he shall gather all the written evidence necessary to elucidate the facts of the case, using the services of its employees and external experts.

2. All persons, State and local authority bodies must cooperate with the [KZD] during the investigation and are required to provide the information and documents requested and to give any necessary clarifications.'

17 Article 65 of the ZZD provides:

'In giving its decision, the formation shall:

1. determine the infringement committed;

2. determine the person responsible for the infringement and the person concerned;
3. determine the type and magnitude of the sanction;
4. order coercive administrative measures;
5. find that there has been no infringement of the law and dismiss the action.'

18 Under Article 68(1) of the ZZD:

'The decisions of the [KZD] may be subject to an appeal, in accordance with the Administrative Procedure Code, within 14 days from their notification to the persons concerned.'

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 19 In 1998 and 1999, the State electricity distribution companies placed meters to measure electricity consumption at a height of seven metres above the ground on posts situated on the outside of houses connected to the electricity network in a certain number of urban districts in Bulgaria which were known to be inhabited primarily by members of the Roma community.
- 20 Such a measure was adopted, in particular, in the Ogosta and Kosharnik districts in the City of Montana, it being common ground that they are still inhabited primarily by people belonging to the Roma community ('the measure at issue in the main proceedings').
- 21 Meanwhile, the supply and distribution of electricity in those two districts was taken over, following the privatisation of the energy sector, in particular by CHEZ Elektro Balcaria AD ('CEB'), the company supplying electricity, and CHEZ Razpredelenie Balcaria AD ('CRB'), a company which owns the electricity distribution networks.
- 22 Article 27 of the general conditions for contracts for the use of CRB's electricity distribution networks ('CRB's general conditions') states, in subparagraph 1 thereof, that 'commercial measuring instruments, including tariff management apparatus are made available so that the consumer may check his consumption'. However, subparagraph 2 thereof provides that '[if], to protect the life and health of citizens and property, the quality of the electricity, the continuity of the supply and the safety and reliability of the electricity supply system, commercial measuring instruments are installed in places to which access is difficult, the electricity distribution company is required to ensure at its own cost the possibility to make a visual inspection within three days of a written request from a consumer'.
- 23 Mr Belov, who describes himself as Roma, lives in the Ogosta district. As, both in his own opinion and in that of other persons of Roma origin who consume electricity in that district and in the Kosharnik district, the measure at issue in the main proceedings constitutes discrimination on grounds of ethnicity prohibited by Article 37 of the ZZD, Mr Belov made a complaint to the KZD, to which a petition signed by numerous other inhabitants of those districts was joined, which asked the KZD to order that CEB abolish that measure and impose sanctions, as laid down in the ZZD.
- 24 The KZD takes the view that the action brought by Mr Belov may be regarded both as an application and a complaint within the meaning of Article 50(1) and (3) respectively of the ZZD. As an inhabitant of the Ogosta district concerned by the measure at issue in the main proceedings, he acts on his own behalf and as the applicant in the proceedings and, in so far as he acts on behalf of other inhabitants of the same district and those in the Kosharnik district, he has the status of complainant.

- 25 As a result, the KZD brought proceedings against CRB, in its capacity of the owner of the electricity meters and the Darzhavna Komisia po energiyno i vodno regulirane (State Energy and Water Regulation Commission) as the authority which approved CRB's general conditions. The same is true for the various natural persons who, in their capacity as legal representatives of CEB and CRB, may be liable to pay fines if the alleged discrimination is established.
- 26 Before the KZD, CRB submits, first of all, that the measure at issue in the main proceedings cannot be regarded as discrimination if, in particular, it applies indistinctly to all the inhabitants of the districts concerned and that no law provides for the right or legitimate interest of the user to consult the reading on his meter.
- 27 Next, CRB claims that the applicant in the main proceedings has not produced evidence of the facts which would lead to the conclusion that there had been such discrimination, as required by Article 9 of the ZZD.
- 28 Finally, CRB contends that the introduction of the measure at issue in the main proceedings has no relationship to the ethnicity of the consumers in the two districts concerned. Moreover, it is justified by the purpose of avoiding damage to the infrastructure and illegal extraction of electricity which might endanger, in particular, the life and health of citizens, safety, the ownership and continuity of the electricity supply, and the extra costs which might result for other consumers.
- 29 As regards Article 27(2) of CRB's general conditions, the KZD points out that, if, as provided by that provisions, a consumer makes an application for a visual inspection of the meter reading, CRB is required to make available, within three days, a special platform allowing access to the meters. However, in such a case, the consumer cannot take a reading himself as this must be communicated to him by the persons authorised to use the platform. Furthermore, that measure has never been relied on in practice.
- 30 The possibility, provided for in Article 17(6) of the general conditions, to install an inspection meter at the consumer's residence involves the payment of a rental charge and, even in that case, the main meter is still positioned outside the house at a height of seven metres.
- 31 The KZD takes the view that the measure at issue in the main proceedings constitutes indirect discrimination on grounds of ethnicity, within the meaning of Articles 4(3) and 37 of the ZZD.
- 32 While noting that the provisions of the ZZD have been adopted, inter alia, to transpose Directive 2000/43, the KZD takes the view that an interpretation of European Union law is necessary in order to give its decision.
- 33 In that connection, it states, in particular, that Article 4(2) and (3) of the ZZD, read together with Point 1(7) of the Supplementary Provisions of the ZZD, as interpreted by the Varhoven administrativen sad (Supreme Administrative Court) (Bulgaria), requires, in order to establish the existence of discrimination, that a right or legitimate interest protected by law has been adversely affected. That is not the case as regards the right to access an electricity meter in order to read it. The KZD wonders whether such an interpretation complies with the provisions of Article 2(2)(a) and (b) of Directive 2000/43.
- 34 Furthermore, the KZD observes that, although Article 8(1) of Directive 2000/43 was transposed almost literally by Article 9 of the ZZD, the Bulgarian-language version of Article 8(1) differs from other language versions of that provision. The Bulgarian-language version provides that the victim must establish the facts from which it may be 'concluded' that there has been discrimination, whereas the other language versions thereof refer to facts from which the existence of such discrimination may be 'presumed'. The Varhoven administrativen sad also applies Article 9 of the ZZD as a full and complete traditional general rule of evidence, taking the view, in particular, that, having regard to the fact that

the Ogosta and Kosharnik districts are not inhabited solely by Roma and the fact that the reasons for the measure at issue in the main proceedings are not based on the ethnicity of the persons concerned by that measure, the existence of discrimination has not been established.

35 Finally, the Varhoven administrativen sad held that, in any event, measures such as that at issue in the main proceedings are necessary and justified having regard to the legitimate objectives pursued. The KZD expresses doubts as to whether such an analysis is well founded.

36 It is in those circumstances that the KZD decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- '1 Does the case to be considered fall within the scope of Council Directive 2000/43 ... of equal treatment between persons irrespective of racial or ethnic origin (here with respect to Article 3(1)(h))?
- 2 What is meant by “treated less favourably” within the meaning of Article 2(2)(a) of Directive 2000/43 and by “put persons of a racial or ethnic origin at a particular disadvantage” within the meaning of Article 2(2)(b) of Directive 2000/43?
  - (a) For less favourable treatment to qualify as direct discrimination, is it absolutely essential for the treatment to be more unfavourable and for it to infringe, directly or indirectly, rights or interests explicitly defined in law, or is it to be understood as any form of behaviour (relationship) in the wider sense of the word which is less advantageous than behaviour in a similar situation?
  - (b) For the fact of being put in a particular unfavourable situation to qualify as indirect discrimination, is it also necessary for it to infringe, directly or indirectly, rights or interests explicitly defined in law, or is it to be understood in the wider sense as any form of being placed in a particular unfavourable/disadvantageous situation?
- 3 Depending on the answer to the second question, if, for direct or indirect discrimination within the meaning of Article 2(2)(a) and (b) of Directive 2000/43 to be deemed to have occurred, it is necessary for the less favourable treatment or the fact of being put in a particular unfavourable situation to infringe, directly or indirectly, a right or interest defined in law,
  - (a) do the provisions of Article 38 of the Charter of Fundamental Rights of the European Union, [Directive 2006/32] (Recital 29, Article 1 and Article 13(1)), [Directive 2003/54] (Article 3(5)) and [Directive 2009/72] (Article 3(7)) define, to the benefit of the final consumer of electricity, a right or interest entitling him to check meter readings regularly and capable of being relied on before the national courts in proceedings such as the main proceedings,  
and
  - (b) is national legislation and/or administrative practice approved by the State energy regulatory authority granting a distribution undertaking the freedom to install electricity meters in places to which it is difficult or impossible to gain access, preventing consumers from checking and monitoring meter readings regularly, compatible with those provisions?
- 4 Depending on the answer to the second question: If, for direct or indirect discrimination to be deemed to have occurred, it is not absolutely necessary for a right or interest defined in law to have been directly or indirectly infringed,



- (a) is, pursuant to Article 2(2)(a) and (b) of Directive 2000/43, national legislation or case-law, as at issue in the main proceedings, admissible if it requires, for discrimination to be deemed to have occurred, that the more unfavourable treatment and the fact of being put in a more unfavourable position infringe, directly or indirectly, rights or interests defined in law;
- (b) if they are not admissible, is the national court then obliged not to apply them in the case before it and to refer to the definitions given in [that] directive?

5 Is Article 8(1) of Directive 2000/43 to be interpreted

- (a) as meaning that it requires the victim to establish facts which impose an unambiguous, incontestable and certain conclusion or inference that direct or indirect discrimination has occurred, or is it sufficient for the facts to justify only an assumption/presumption of such discrimination?
- (b) Do the facts that only in the two parts of the city known as Roma districts are electricity meters attached to electricity poles in the streets at a height at which consumers cannot read them, with known exceptions in some parts of those two urban districts, and in all other districts of the city the electricity meters are placed at a different height (up to 1.7 m) at which they can be read, usually in the consumer's home, on the outside of the building or on surrounding fences, lead to a shift in the burden of proof to the defendant?
- (c) Do the facts that not only Roma but also people of a different ethnic origin live in the two parts of the city known as Roma districts and/or accordingly, not all the inhabitants of those two districts actually regard themselves as Roma, and/or the reasons for placing the electricity meters in those two urban districts at a height of 7 m are described by the distribution undertaking as being generally known, preclude a shift in the burden of proof to the defendant?

6 Depending on the answer to Question 5:

- (a) If Article 8(1) of Directive 2000/43 is to be interpreted as meaning that an assumption/presumption of the occurrence of discrimination is necessary and if the aforementioned facts lead to a shift in the burden of proof to the defendant, what form of discrimination can be presumed from those facts – direct or indirect discrimination and/or harassment?
- (b) Do the provisions of Directive 2000/43 enable direct discrimination and/or harassment to be justified by the pursuit of a legal objective by necessary and suitable means?
- (c) In view of the legal objectives which the distribution undertaking emphasises it is pursuing, can the measure taken in the two urban districts be justified in a situation in which
  - the measure is taken because of the increasing incidence of unpaid bills in the two urban districts and the frequent offences committed by consumers which impair or threaten the safety, quality and continuous and secure operation of the electrical installationsand
  - the measure is taken across the board, irrespective of whether the individual consumer pays his bills for the distribution and supply of electricity and whether the individual consumer has been found to have committed any offence (manipulation of meter

readings, illegal connection and/or extraction and/or consumption of electricity without payment, or any other interference with the network which impairs or threatens its safe, high-quality, continuous and secure operation);

- provision is made in legislation and the General Conditions of the Contract on Distribution (“Distribution Contract”) for liability for any similar offence in civil, administrative and criminal law;
- the clause contained in Article 27(2) of the General Conditions of the Distribution Contract – whereby the distribution undertaking gives an assurance that, if explicitly requested by a consumer in writing, it will enable him to make a visual check of the meter readings – does not in fact enable the consumer to check the readings personally and regularly;
- it is possible for an inspection meter to be installed in the consumer’s home at his explicit written request, although a fee is payable;
- the measure is a distinctive and visible reference to the dishonesty of the consumer in one or other form in view of what the distribution undertaking refers to as the generally known reasons for the measure being taken;
- other technical methods and means can be used to protect electricity meters against interference;
- the legal representative of the distribution undertaking claims that a similar measure taken in a Roma district of another city was in fact unable to prevent interference;
- it is not assumed that an electrical installation in one of these urban districts, a transformer station, will need to undergo measures similar to those taken to protect electricity meters?’

### **Jurisdiction of the Court**

- <sup>37</sup> In its order for reference, the KZD sets out the reasons for which it considers that it is a ‘court or tribunal’ within the meaning of Article 267 TFEU. The Bulgarian Government and the European Commission also consider that the KZD has such a character, and that the Court of Justice therefore has jurisdiction to give a ruling on the questions referred to it by that body. However, CEB and CRB express doubts on this matter and argue, first of all, that the KZD does not have compulsory jurisdiction, second, that that body does not offer sufficient guarantees as to its independence and, third, that the proceedings pending before that body are not intended to lead to a decision of a judicial nature.
- <sup>38</sup> In that regard, it should be recalled, as a preliminary point, that, according to settled case-law, in order to determine whether a body making a reference is a court or tribunal for the purposes of Article 267 TFEU, which is a question governed by EU law alone, the Court takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent (see, in particular, Case C-196/09 *Miles and Others* [2011] ECR I-5105, paragraph 37 and the case-law cited).

- 39 In addition, a national court may refer a question to the Court only if there is a case pending before it and if it is called upon to give judgment in proceedings intended to lead to a decision of a judicial nature (see, in particular, Case C-53/03 *Syfait and Others* [2005] ECR I-4609, paragraph 29 and the case-law cited).
- 40 Therefore, it is appropriate to determine whether a body may refer a case to the Court of Justice on the basis of criteria relating both to the constitution of that body and to its function. In that connection, a national body may be classified as a court or tribunal within the meaning of Article 267 TFEU, when it is performing judicial functions, but when exercising other functions, of an administrative nature, for example, it cannot be recognised as such (see, in particular, order of 26 November 1999 in Case C-192/98 *ANAS* [1999] ECR I-8583, paragraph 22).
- 41 It follows that, in order to establish whether a national body, entrusted by law with different categories of functions, is to be regarded as a court or tribunal within the meaning of Article 267 TFEU, it is necessary to determine in what specific capacity it is acting within the particular legal context in which it seeks a ruling from the Court (see order in *ANAS*, paragraph 23).
- 42 Therefore, as regards the present case, it should be observed that although the KZD is called on, in particular, as the body responsible for promoting equal treatment referred to in Article 13 of Directive 2000/43, to exercise various functions which are not in any way of a judicial nature, in the present case, having regard to the functions that it exercises in the proceedings which gave rise to the present request for a preliminary ruling, it is appropriate to ascertain whether or not that body may be regarded as a court or tribunal within the meaning of Article 267 TFEU.
- 43 In that connection, it is clear from Article 50 of the ZZD that proceedings taking place before the section of the KZD which made the present request for a preliminary ruling may originate either from an application from a person who considers himself a victim of discrimination, pursuant to Point 1 of that provision, or as a complaint made by natural and legal persons or State or local authority bodies, as provided for in Point 3 of Article 50 of the ZZD or, lastly, in an initiative of the KZD itself in accordance with Point 2 of that article.
- 44 In the present case, it is clear from the assessments made by the KZD as set out in paragraph 24 of this judgment, that Mr Belov brought a complaint before it both on the basis of Article 50(1) of the ZZD, as a person directly concerned by the measure at issue in the main proceedings, and Article 50(3) of the ZZD in so far as he claims also to act on behalf of other inhabitants of the two districts concerned by that measure.
- 45 It is, in particular, in taking account of the functions that the KZD is called on to exercise when a case is referred to it that it is appropriate in the present case to determine whether that body must be classified as a court or tribunal within the meaning of Article 267 TFEU.
- 46 In that connection, it must be held that the various factors, among those relied on by CEB and CRB, which are capable of giving rise to doubts that the proceedings before the KZD based on Article 50(1) and (3) of the ZZD are intended to lead to a decision of a judicial nature for the purposes of the case-law set out in paragraph 39 of this judgment.
- 47 In the first place, it is clear from Article 50(2) of the ZZD that similar proceedings to those which gave rise to the present request for a preliminary ruling could, in relation to the same facts, equally have been brought by the KZD acting on its own initiative. It is apparent, in light of the information before the Court, that, regardless of the circumstances in which the case was referred to that body on the basis of Article 50 of the ZZD, that is, by way of application, complaint or of its own motion, that body is required to bring proceedings which are essentially similar in which it has, inter alia, extensive powers of investigation in order to gather the evidence necessary to elucidate the facts concerned.

Furthermore, the results to which those proceedings are intended to lead thus initiated by application, complaint or of the KZD's own motion, are themselves similar, namely an injunction to cease the discrimination found and an order for the persons responsible for it to pay fines.

- 48 In the second place, it is common ground that the KZD may, as it has done in the present case, join to the proceedings, of its own motion, other persons than those expressly appointed by the party which has brought the action before it by way of an application or a complaint, in particular where the KZD considers that those parties may have to answer for the discrimination alleged by the applicant/complainant and/or be liable to pay a fine on that basis.
- 49 Third, it is also common ground, on the basis of the information submitted to the Court, that, where an action is brought against a decision of the KZD adopted after proceedings have been brought on the basis of Article 50 of the ZZD, that body has the status of defendant before the administrative court called on to give a ruling on that application. Furthermore, if the decision of the KZD is annulled by the administrative court before which an action has been brought, that body may appeal against the decision to annul before the Varhoven administrativen sad.
- 50 Fourth, it also seems to follow from the Administrative Procedural Code, as alleged at the hearing by CEB and CRB and confirmed by Mr Belov, that, if an action is brought against a decision of the KZD given in proceedings such as those at issue in the main proceedings, it is possible for that body to revoke that decision, if the party to whom the decision is addressed is favourable.
- 51 All the circumstances lead to the view that the decision that the KZD is called on to give at the end of proceedings brought before that body on the basis of Article 50 of the ZZD and in particular subparagraphs 1 and 3 thereof, is similar in substance to an administrative decision and do not have a judicial nature within the meaning of the case-law of the Court relating to the concept of 'court or tribunal' in Article 267 TFEU.
- 52 Furthermore, it must be stated in that connection that, if such a decision of the KZD is, as stated, subject to appeal before an administrative court whose decision is itself subject to appeal before the Varhoven administrativen sad, the existence of those judicial appeals ensures the effectiveness of the mechanism of the request for a preliminary ruling provided for in Article 267 TFEU and the uniform interpretation of European Union law and, in the present case, in particular of Directive 2000/43, that that provision of the Treaty seeks to ensure. Under Article 267 TFEU, such national courts have the option or, where appropriate, are required to make a request for a preliminary ruling to the Court where a decision on the interpretation or the validity of European Union law is necessary to give their judgment.
- 53 Similarly, it must be observed that before the Court decisions of the Varhoven kasationsionen sad (Supreme Court of Cassation) (Bulgaria) were cited of 22 January 2009 and of the Varhoven administrativen sad of 27 October 2010, from which it is clear that the ZZD put in place two alternative independent procedures enabling a person who, like Mr Belov, considers himself to be the victim of discrimination to request that that discrimination should cease. Apart from the possibility to initiate administrative type proceedings, such as those pending before the KZD in the case in the main proceedings based on Article 50 of the ZZD, the person concerned also has the possibility to bring an action before the Rayonen sad (District Court) (Bulgaria) which hears civil matters in order to put an end to such discrimination and the payment of damages.
- 54 Since the finding in paragraph 51 of this judgment suffices to conclude that when the KZD is called on to exercise a function such as that required of it in the main proceedings, that body is not a 'court or tribunal' within the meaning of Article 267 TFEU, there is no need to examine whether the other criteria for assessing whether a referring body is a 'court or tribunal' for the purposes of Article 267

TFEU are satisfied by the KZD nor therefore to give a ruling on the other objections made by CEB and CRB in that regard (see, to that effect, Case C-517/09 *RTL Belgium* [2010] ECR I-14093, paragraph 48).

- 55 It follows from all of the foregoing that the Court does not have jurisdiction to rule on the questions referred by the KZD.

### **Costs**

- 56 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 (Fourth Chamber) hereby rules:

**The Court of Justice of the European Union does not have jurisdiction to answer the questions referred by the Komisia za zashtita ot diskriminatsia in its order for reference of 19 July 2011.**

[Signatures]