



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

19 September 2018*

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment in employment and occupation — Article 2(2) — Prohibition of any discrimination on grounds of disability — Collective agreement on social security — Bridging assistance paid to former civilian employees of the Allied forces in Germany — Termination of the payment of that assistance when the recipient becomes entitled to early payment of a retirement pension for disabled persons under the statutory pension scheme)

In Case C-312/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesarbeitsgericht Hamm (Higher Labour Court, Hamm, Germany), made by decision of 28 March 2017, received at the Court on 29 May 2017, in the proceedings

Surjit Singh Bedi

v

Bundesrepublik Deutschland,

Bundesrepublik Deutschland in Prozesstandschaft für das Vereinigte Königreich von Großbritannien und Nordirland,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, J. Malenovský, M. Safjan (Rapporteur), D. Šváby and M. Vilaras, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

- the German Government, by T. Henze and J. Möller, acting as Agents,
- the Bundesrepublik Deutschland in Prozesstandschaft für das Vereinigte Königreich von Großbritannien und Nordirland, by B. von Buchholz, Rechtsanwältin,
- the European Commission, by D. Martin and M. Kellerbauer, acting as Agents,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 29 May 2018,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(2) of 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).
- 2 The request has been made in proceedings between Mr Surjit Singh Bedi and the Bundesrepublik Deutschland (Federal Republic of Germany) as well as the Bundesrepublik Deutschland in Prozesstandschaft für das Vereinigte Königreich von Großbritannien und Nordirland (Federal Republic of Germany, acting on behalf of the United Kingdom of Great Britain and Northern Ireland) concerning the termination of the payment of bridging assistance payable under a collective agreement once the recipient has become entitled to early payment of a retirement pension for disabled persons under the statutory pension scheme.

Legal context

EU law

- 3 Recitals 8, 11 to 13 and 15 of Directive 2000/78 state:
 - (8) The Employment Guidelines for 2000 agreed by the European Council at Helsinki on 10 and 11 December 1999 stress the need to foster a labour market favourable to social integration by formulating a coherent set of policies aimed at combating discrimination against groups such as persons with disability. They also emphasise the need to pay particular attention to supporting older workers, in order to increase their participation in the labour force....
 - (11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.
 - (12) To this end, any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community. This prohibition of discrimination should also apply to nationals of third countries but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and occupation.
 - (13) This Directive does not apply to social security and social protection schemes whose benefits are not treated as income within the meaning given to that term for the purpose of applying Article 141 of the EC Treaty, nor to any kind of payment by the State aimed at providing access to employment or maintaining employment.
- ...

(15) The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or practice. Such rules may provide, in particular, for indirect discrimination to be established by any means including on the basis of statistical evidence.'

4 Article 1 of the directive provides:

'The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.'

5 Article 2(1) and (2) of the directive provides:

'1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

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 any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or

(ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.'

6 Article 3(1) and (3) of the directive is worded as follows:

'1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

...

(c) employment and working conditions, including dismissals and pay;

...

3. This Directive does not apply to payments of any kind made by state schemes or similar, including state social security or social protection schemes.'

7 Article 16 of Directive 2000/78 is worded as follows:

'Member States shall take the necessary measures to ensure that:

(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;

- (b) any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations are, or may be, declared null and void or are amended.'

German law

- 8 The Tarifvertrag zur sozialen Sicherung der Arbeitnehmer bei den Stationierungstreitkräften im Gebiet der Bundesrepublik Deutschland (collective agreement on social security for persons employed by armed forces stationed in the Federal Republic of Germany) of 31 August 1971 ('the TV SozSich') was entered into between the Federal Republic of Germany and various trade unions, with the purpose of regulating the conditions of employment of workers engaged by the armed forces stationed on its territory on behalf of their States of origin, which include the United Kingdom.
- 9 Paragraph 2 of the TV SozSich, entitled 'Eligibility conditions', states:
- 'Employees shall be entitled to the benefits provided for by this collective agreement if they
1. are made redundant on account of reductions in staff numbers
 - (a) due to a reduction in military personnel,
 - (b) due to the closure of stations or disbanding of units or the transfer of those units outside the perimeter of the current permanent place of work as a result of a decision made on military grounds by the highest hierarchical authority,
 2. when, at the time at which they are made redundant, they
 - (a) have been in full-time employment for at least one year,
 - (b) can provide evidence of at least five years of employment within the meaning of the [Tarifvertrag für die Arbeitnehmer bei den Stationierungstreitkräften im Gebiet der Bundesrepublik Deutschland (collective agreement concerning persons employed by forces stationed in the Federal Republic of Germany) of 16 December 1966, 'the TV AL II'] or of the [Tarifvertrag für die bei den Dienststellen, Unternehmen und sonstigen Einrichtungen der alliierten Behörden und der alliierten Streitkräfte im Gebiet von Berlin beschäftigten Arbeitnehmer (collective agreement concerning persons employed in the services, undertakings and other bodies of the Allied administrations and Allied armed forces in Berlin) of 30 January 1968, 'the TV B II'] and are 40 years of age,
 - (c) were permanent residents during the previous five years within the territorial scope of the TV AL II or the TV B II,
 - (d) are not entitled to the payment or early payment of a retirement pension under the statutory pension scheme, and
 3. when no other acceptable employment within the scope of the TV AL II has been offered to them
...

10 Paragraph 4 of the TV SozSich, entitled 'Bridging assistance', states:

'1. Bridging assistance shall be paid:

- (a) in addition to income received for other employment outside the armed forces stationed on German territory,
- (b) in addition to benefit paid by the Bundesanstalt für Arbeit [(Federal Office for Employment, Germany)] owing to unemployment or professional training programmes (unemployment benefit/assistance, subsistence),
- (c) in addition to sickness benefits under the statutory health insurance scheme or invalidity benefits under the statutory accident insurance scheme in the event of incapacity for work as a result of an accident at work.

...

3.

- (a)(1) The basis of assessment of bridging assistance payable in addition to remuneration for other employment (subparagraph 1a) shall be the collectively agreed basic remuneration under Paragraph 16(1)(a) of the TV AL II to which the employee was entitled for a full calendar month on the basis of his contractually agreed normal working time at the time of cessation of employment (formula: normal working time x 13: 3) ...

5.

- (a) Employees who, when they are made redundant, have completed
20 years of service (Paragraph 8 of TV AL II or TV B II) and are at least 55 years of age or
25 years of service (Paragraph 8 of TV AL II or TV B II) and are at least 50 years of age
shall receive bridging assistance in accordance with paragraphs 1 to 4 without any temporal restriction.

...'

11 Paragraph 8 of the TV SozSich, entitled 'Exclusion from payment and restitution of unduly paid bridging assistance and contribution subsidies', provides in subparagraph 1(c):

'Bridging assistance and contribution subsidies shall not be paid in respect of the periods:

...

- (c) subsequent to the month during which the employee becomes entitled to receive early payment of a retirement pension or payment of an invalidity pension under the statutory pension scheme.'

The dispute in the main proceedings and the question referred for a preliminary ruling

12 Mr Bedi, born in 1954, was classified as a severely disabled person, with a 50% disability rating.

- 13 He was engaged in Germany by the United Kingdom armed forces in 1978 as a civilian employee, latterly as a security guard at the station in Münster (Germany). Pursuant to the terms of his employment contract, the collective agreements on social security for persons employed by armed forces stationed in the Federal Republic of Germany, including the TV SozSich, were applicable to his employment relationship.
- 14 Mr Bedi was made redundant with effect from 31 December 2013 because of the closure of the Münster station. As from 1 January 2014, he received the bridging assistance payable under Paragraph 4 of the TV SozSich ('the bridging assistance'). That assistance latterly amounted to EUR 1 604.20 per month.
- 15 On 1 March 2014, Mr Bedi was engaged as a security guard by a private company and has been employed full-time by that company since 1 April 2016.
- 16 By letter of 23 March 2015, the Federal Republic of Germany informed Mr Bedi that, since he qualified for an early retirement pension payable to severely disabled persons under the statutory pension scheme with effect from 1 May 2015, his right to bridging assistance would cease as from 30 April 2015, pursuant to Paragraph 8(1)(c) of the TV SozSich. Payment of that assistance was terminated on that date.
- 17 In Mr Bedi's circumstances, early payments of the retirement pension for severely disabled persons would amount to EUR 909.50 per month, reduced by 10.80% in order to reflect the period of 36 months during which he would receive early payment of the pension. The threshold of any income he might receive in addition to that retirement pension without the amount of that pension being reduced was EUR 450 per month in respect of a full retirement pension. The thresholds for remuneration in addition to a partial pension, which would also be a possibility in Mr Bedi's case, were EUR 2 310, EUR 1 750 and EUR 1 200 for partial retirement pensions, representing one-third, one half and two-thirds of a full pension. In the present case, Mr Bedi is entitled to a partial pension representing two-thirds of that pension.
- 18 Mr Bedi brought an action before the Arbeitsgericht Münster (Labour Court, Münster, Germany) against the Federal Republic of Germany as a party to the TV SozSich and as a party acting on behalf of the United Kingdom pursuant to Article 56(8) of the Agreement of 3 August 1959, as amended by the Agreements of 21 October 1971, 18 May 1981, and 18 March 1993, to Supplement the Agreement of 19 June 1951 between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign Forces stationed in the Federal Republic of Germany. He sought a ruling from the court that there is an obligation to continue paying him bridging assistance after 1 May 2015. By judgment notified on 11 February 2016, the Arbeitsgericht Münster (Labour Court, Münster) dismissed Mr Bedi's action.
- 19 Mr Bedi brought an appeal against that judgment before the Landesarbeitsgericht Hamm (Higher Labour Court, Hamm, Germany). He sought a ruling from the court that there is an obligation to continue paying him bridging assistance, as well as an order for payment of the assistance for the period from April 2016 to December 2016.
- 20 The referring court is uncertain whether Paragraph 8(1)(c) of the TV SozSich breaches the prohibition on discrimination on grounds of disability, referred to in Articles 1 and 16 of Directive 2000/78, in circumstances where a worker is entitled to early payment of a retirement pension for severely disabled persons under the statutory pension scheme.
- 21 According to the case-law of the Bundesarbeitsgericht (Federal Labour Court, Germany), Paragraph 8(1)(c) of the TV SozSich does not discriminate, directly or indirectly, against the workers concerned. That provision, taking into account the conditions under which a person is entitled to

receive early payment of a retirement pension, is not based on disability and, in any event, is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

- 22 However, according to the referring court, discrimination cannot be ruled out in the light of the Court's recent case-law, more specifically, the judgment of 6 December 2012, *Odar* (C-152/11, EU:C:2012:772).
- 23 In that regard, the referring court points out, inter alia, that the condition laid down in Paragraph 8(1)(c) of the TV SozSich is that of entitlement to early payment of a retirement pension. Given that what matters is not the actual drawing of the retirement pension by the worker, but only his entitlement to do so, the TV SozSich always leads to a shorter payment period for disabled workers than for non-disabled workers. However, the same starting point applies to both groups of workers, in that they have been made redundant by their employer and, on account of their advanced age and the long-term nature of their employment relationship, have need of assistance in order to maintain the reasonable standard of living that they were able to enjoy due to their employment and the income from that employment until they are entitled to a retirement pension under the statutory pension scheme.
- 24 To take as a condition chosen, in respect of bridging assistance, the right to early payment of a retirement pension for severely disabled persons would undermine the advantage received through the award of that pension, which is designed to take account of the specific difficulties and risks faced by severely disabled workers. Since it compensates the disadvantages resulting solely from such disability, that advantage must not be taken into account for the purposes of the comparison between severely disabled workers and non-disabled workers, and of their situation in the light of entitlement to bridging assistance. Otherwise, the statutory compensation provided for by the legislature for the specific difficulties faced by severely disabled persons would operate to their detriment.
- 25 In those circumstances, the Landesarbeitsgericht Hamm (Higher Labour Court, Hamm) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is Article 2(2) of Directive [2000/78] to be interpreted as precluding a provision in a collective agreement under which the receipt of bridging assistance — granted, on the basis of the basic remuneration laid down in the collective agreement, with the aim of ensuring a reasonable means of subsistence for workers who have lost their jobs until they are able to secure financial protection through entitlement to a pension under the statutory pension scheme — ends once the worker concerned is entitled to receive an early retirement pension, and the application of which is based on the possibility of receiving an early retirement pension on grounds of disability?'

Consideration of the question referred

- 26 By its question, the referring court asks, in essence, whether Article 2(2) of Directive 2000/78 must be interpreted as precluding provisions in a collective agreement under which the payment of bridging assistance — granted with the aim of ensuring a reasonable means of subsistence to a worker who has lost his job until he is entitled to a retirement pension under the statutory pension scheme — must cease once that worker is entitled to early payment of a retirement pension for severely disabled persons under that scheme.
- 27 In the present case, the TV SozSich is a collective agreement entered into between the Federal Republic of Germany and various trade unions in respect of social security for persons employed by armed forces stationed in German territory.

- 28 As a preliminary point, it should be borne in mind that, in accordance with the Court's settled case-law, it is clear from the title of, and preamble to, Directive 2000/78, as well as from its content and purpose, that that directive is intended to establish a general framework for ensuring that everyone benefits from equal treatment 'in matters of employment and occupation' by providing effective protection against discrimination based on any of the grounds listed in Article 1 thereof, which include disability (see, to that effect, judgments of 18 June 2009, *Hütter*, C-88/08, EU:C:2009:381, paragraph 33, and of 14 March 2018, *Stollwitzer*, C-482/16, EU:C:2018:180, paragraph 20).
- 29 In order to answer the question asked by the referring court, it is appropriate to examine, in the first place, whether provisions such as those of the TV SozSich concerning bridging assistance, the discriminatory nature of which is alleged, come within the scope of Directive 2000/78.
- 30 In that regard, the scope of that directive must be understood, in the light of Article 3(1)(c) and (3) read in conjunction with recital 13 of that directive, as excluding social security or social protection schemes, the benefits of which are not equivalent to 'pay' within the meaning given to that term for the application of Article 157(2) TFEU (judgments of 6 December 2012, *Dittrich and Others*, C-124/11, C-125/11 and C-143/11, EU:C:2012:771, paragraph 31, and of 2 June 2016, *C*, C-122/15, EU:C:2016:391, paragraph 20).
- 31 It must therefore be determined whether bridging assistance, such as that payable under the TV SozSich, can be classified as 'pay' within the meaning of Article 157 TFEU.
- 32 In accordance with Article 157(2) TFEU, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.
- 33 It is apparent from the Court's case-law that the concept of 'pay' within the meaning of Article 157(2) TFEU must be interpreted broadly. It covers, in particular, any consideration, whether in cash or in kind, whether immediate or future, provided that the worker receives it, albeit indirectly, in respect of his employment from his employer, and irrespective of whether it is received under a contract of employment, by virtue of legislative provisions or on a voluntary basis. Moreover, the fact that certain benefits are paid after the termination of the employment relationship does not prevent them from being in the nature of pay within the meaning of the abovementioned provisions (judgments of 6 December 2012, *Dittrich and Others*, C-124/11, C-125/11 and C-143/11, EU:C:2012:771, paragraph 35, and of 2 June 2016, *C*, C-122/15, EU:C:2016:391, paragraph 21).
- 34 The Court has also stated that consideration classified as pay specifically includes consideration paid by the employer under a contract of employment whose purpose is to ensure that workers receive income even where, in certain specific cases, they are not performing any work provided for in their contracts of employment. Moreover, the fact that such benefits are in the nature of pay cannot be called in question merely because they can also be regarded as reflecting considerations of social policy (judgments of 9 December 2004, *Hlozek*, C-19/02, EU:C:2004:779, paragraph 39, and of 2 June 2016, *C*, C-122/15, EU:C:2016:391, paragraph 22).
- 35 In addition, as regards the compensation granted by an employer to a worker when he is made redundant, the Court has already stated that such compensation is a form of deferred pay to which the worker is entitled by reason of his employment but which is paid to him on termination of the employment relationship with a view to enabling him to adjust to the new circumstances arising from such termination (judgments of 17 May 1990, *Barber*, C-262/88, EU:C:1990:209, paragraph 13, and of 9 December 2004, *Hlozek*, C-19/02, EU:C:2004:779, paragraph 37).

- 36 Moreover, the Court has consistently held that, in order to assess whether a benefit comes within the scope of Article 157 TFEU, only the criterion of whether the benefit was paid to the worker by reason of the employment relationship between him and his former employer, that is to say, the criterion of employment, based on the wording of that article, can be decisive (see, to that effect, judgments of 6 December 2012, *Dittrich and Others*, C-124/11, C-125/11 and C-143/11, EU:C:2012:771, paragraph 37, and of 24 November 2016, *Parris*, C-443/15, EU:C:2016:897, paragraph 34).
- 37 In the present case, it is apparent from the order for reference that bridging assistance is designed to make it possible for older workers who have been employed on a long-term basis and who have been properly made redundant on operational grounds to receive support following the end of the employment relationship. The aim of the assistance is to ensure their livelihood and compensate for the difficulties arising from the fact that they may receive a lower rate of pay in their new post or may be unemployed. The assistance is also designed to encourage workers to remain active by finding new positions outwith the armed forces sector in Germany. This is the case when, inter alia, the worker obtains lower pay in his new employment than his previous pay with those armed forces, or even than unemployment benefit.
- 38 The referring court observes that bridging assistance is a special social benefit financed by taxation, paid by the Federal Republic of Germany pursuant to its obligations deriving from the TV SozSich, outside the former employment relationship between the worker and the State which employed that worker. However, that court points out that the Federal Republic of Germany pays that assistance on behalf of the States of origin of the armed forces stationed in German territory.
- 39 In those circumstances, the assistance must be regarded in the present case as paid to Mr Bedi by the United Kingdom in its capacity as employer, as stated by the Federal Republic of Germany, acting on behalf of the United Kingdom, in its written observations.
- 40 What is more, since the bridging assistance is payable under a collective agreement such as the TV SozSich, which concerns only a specific group of workers, that is, persons employed by armed forces stationed in German territory, that assistance is determined by the terms of the employment relationship entered into by the worker entitled to that assistance and the employer.
- 41 In that regard, the amount of the assistance is calculated by reference to the last salary paid. As indicated by the referring court, bridging assistance is granted on the basis of the basic remuneration to which the employee was entitled when he was made redundant, in accordance with Paragraph 4(3)(a)(1) of the TV SozSich.
- 42 It follows that bridging assistance is current remuneration in cash paid by the employer to the worker in respect of the latter's employment. As a result, it constitutes 'pay' within the meaning of Article 157(2) TFEU. That assistance therefore comes within the scope of Directive 2000/78.
- 43 It is appropriate, in the second place, to examine whether Paragraph 8(1)(c) of the TV SozSich introduces discrimination on grounds of disability, which is prohibited by Directive 2000/78.
- 44 In that regard, it must be recalled that, in accordance with Article 2(1) of the directive, the 'principle of equal treatment' means that there must be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1 of the directive, which include disability.
- 45 As to whether there is direct discrimination, under Article 2(2)(a) of Directive 2000/78 direct discrimination occurs when a person is treated in a less favourable manner than another person in a comparable situation on one of the grounds listed in Article 1 of the directive.

- 46 In the present case, it is apparent from the order for reference that not only severely disabled workers but other groups of workers are entitled to early payment of a retirement pension under the German statutory pension scheme.
- 47 Consequently, the termination of payments of bridging assistance in circumstances in which the person concerned is entitled to early payment of a retirement pension or an invalidity pension under the statutory pension scheme, pursuant to Paragraph 8(1)(c) of the TV SozSich, does not concern severely disabled workers alone.
- 48 In those circumstances, it cannot be held that that provision establishes a difference of treatment directly based on disability within the meaning of the combined provisions of Articles 1 and 2(2)(a) of Directive 2000/78, since it uses a criterion that is not inseparably linked to disability (see, to that effect, judgments of 11 April 2013, *HK Danmark*, C-335/11 and C-337/11, EU:C:2013:222, paragraphs 72 and 74, and of 18 January 2018, *Ruiz Conejero*, C-270/16, EU:C:2018:17, point 37).
- 49 As to whether there is indirect discrimination, it should be noted at the outset that Article 2(2)(b)(ii) of Directive 2000/78 is irrelevant in the light of the circumstances of the case in the main proceedings, since it has not been alleged that German legislation requires Mr Bedi's employer, a person or an organisation to which the directive applies, to take appropriate measures, within the meaning of that provision, in order to eliminate disadvantages potentially entailed by the provisions of the TV SozSich at issue in the main proceedings.
- 50 As for Article 2(2)(b)(i) of Directive 2000/78, that provision provides that indirect discrimination is to be taken to occur where an apparently neutral provision, criterion or practice would put persons having, inter alia, a particular disability 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.
- 51 In that regard, the referring court observes that severely disabled workers are granted early payment of a retirement pension under the statutory pension scheme according to their year of birth and that, consequently, they are generally entitled to bridging assistance for a period of one to three years less than non-disabled workers of the same age before the latter become entitled to early payment of a retirement pension for long-term employees. In the present case, bridging assistance was granted to Mr Bedi until the age of 60 years and 8 months only, instead of until the age of 63 if he were not severely disabled.
- 52 It is apparent from the order for reference that, in the light of the reduction of the amount of a retirement pension, if drawn early, and of the thresholds of additional income that a worker can receive in addition to that pension, the aggregate income of a disabled person in Mr Bedi's situation is lower than the aggregate income — made up of the amount of bridging assistance to which the remuneration paid in the context of a new employment relationship could be added — that a non-disabled person in the same situation could receive.
- 53 In those circumstances, the Court finds that, in circumstances such as those of the case in the main proceedings, the effect of Paragraph 8(1)(c) of the TV SozSich is that the income of a severely disabled worker, for the period during which he receives early payment of a retirement pension, is lower than that of a non-disabled worker. It is thus apparent that the rule laid down in that provision is liable to place disabled workers at a disadvantage and so to bring about a difference of treatment indirectly based on disability within the meaning of Article 2(2)(b) of Directive 2000/78.
- 54 In that regard, the German Government and the Federal Republic of Germany, acting on behalf of the United Kingdom of Great Britain and Northern Ireland, nonetheless claim that, in the light of the date on which workers become entitled to early payment of a retirement pension under the statutory

pension scheme, severely disabled workers and non-disabled workers have objectively different starting points in respect of their need for bridging assistance. According to those parties, the former would no longer be in need of that assistance, in contrast to the latter.

- 55 However, it is apparent from the Court's case-law that workers in age brackets approaching retirement are in a situation comparable to that of other workers concerned by a redundancy, since their employment relationship with their employer ends for the same reason and in the same circumstances (see, to that effect, judgment of 6 December 2012, *Odar*, C-152/11, EU:C:2012:772, paragraph 61).
- 56 The advantage granted to severely disabled workers consisting in entitlement to claim a retirement pension as from a younger age than non-disabled workers does not place them in a different situation in relation to those workers (see, to that effect, judgment of 6 December 2012, *Odar*, C-152/11, EU:C:2012:772, paragraph 62).
- 57 In the present case, the application of Paragraph 8(1)(c) of the TV SozSich concerns workers approaching retirement age who have been made redundant. Consequently, severely disabled workers are in a situation comparable to that of non-disabled workers in the same age bracket in the light of Article 2(2)(b) of Directive 2000/78.
- 58 Therefore, in accordance with that provision, it is necessary to examine whether the difference in treatment between those two groups of workers is objectively and reasonably justified by a legitimate aim, whether the means relied on to achieve that aim are appropriate and whether they do not go beyond what is necessary to achieve the aim pursued.
- 59 It should be recalled in that regard that, as EU law stands at present, the Member States and, where appropriate, the social partners at national level enjoy broad discretion in their choice, not only to pursue a particular aim in the field of social and employment policy, but also in the definition of measures capable of achieving it (judgments of 16 October 2007, *Palacios de la Villa*, C-411/05, EU:C:2007:604, paragraph 68, and of 26 September 2013, *Dansk Jurist- og Økonomforbund*, C-546/11, EU:C:2013:603, paragraph 50).
- 60 In the present case, as stated in paragraph 37 of the present judgment, the rules governing the bridging assistance payable under the TV SozSich are designed to offset, at least in part, the loss of income caused by redundancy and to encourage the persons concerned to re-enter the labour market. In those circumstances, the right to early payment of a retirement pension under the statutory pension scheme ensures that the person concerned receives an income, in the light of which the continued payment of bridging assistance may not appear to be indispensable for the protection of that person.
- 61 Therefore, it must be considered that, in a case such as that in the main proceedings, providing compensation for the future of workers who have been made redundant and facilitating their reintegration into employment, whilst taking account of the need to achieve a fair distribution of limited financial resources, can be deemed legitimate aims within the meaning of Article 2(2)(b)(i) of Directive 2000/78 (see, to that effect, judgment of 6 December 2012, *Odar*, C-152/11, EU:C:2012:772, paragraphs 42 and 43).
- 62 In those circumstances, the Court accepts that those aims must, in principle, be held to be capable of justifying 'objectively and reasonably' a difference in treatment on grounds of disability.
- 63 It is still necessary to ascertain whether the means employed to achieve that aim are appropriate and necessary and do not go beyond what is required to achieve the aim pursued.
- 64 As to whether the provisions at issue of the TV SozSich are appropriate, it should be noted that termination of the payment of bridging assistance to workers entitled to early payment of a retirement pension does not appear to be unreasonable in the light of the purpose of that assistance, which is to

provide additional and temporary support after the employment relationship has ended, offered on a voluntary basis by the employer on account of the former employment relationship, until the worker obtains financial protection due to his becoming entitled to a retirement pension under the statutory pension scheme.

- 65 Therefore, it must be held that a provision such as Paragraph 8(1)(c) of the TV SozSich does not appear to be manifestly inappropriate for the purpose of achieving the legitimate employment policy aim pursued by the German social partners.
- 66 In order to examine whether such a provision goes beyond what is necessary to achieve the aims pursued, that provision must be placed in its context and the adverse effects it is liable to cause for the persons concerned must be considered (see, to that effect, judgment of 6 December 2012, *Odar*, C-152/11, EU:C:2012:772, paragraph 65).
- 67 As regards the context of Paragraph 8(1)(c) of the TV SozSich, the German Government submits that social partners, in respect of collective agreements, are not required to choose the most equal, reasonable or appropriate solution. They enjoy the privileges deriving from the right of collective bargaining under Article 28 of the Charter of Fundamental Rights of the European Union (‘the Charter’).
- 68 The Court has held that the nature of measures adopted by way of a collective agreement differs from the nature of those adopted unilaterally by way of legislation or regulation by the Member States in that the social partners, when exercising their fundamental right to collective bargaining recognised in Article 28 of the Charter, have taken care to strike a balance between their respective interests (judgment of 8 September 2011, *Hennigs and Mai*, C-297/10 and C-298/10, EU:C:2011:560, paragraph 66 and the case-law cited).
- 69 Where the right of collective bargaining proclaimed in Article 28 of the Charter is covered by provisions of EU law, it must, within the scope of that law, be exercised in compliance with that law (judgment of 8 September 2011, *Hennigs and Mai*, C-297/10 and C-298/10, EU:C:2011:560, paragraph 67 and the case-law cited).
- 70 Consequently, when they adopt measures coming within the scope of Directive 2000/78, the social partners must comply with that directive (see, to that effect, judgment of 8 September 2011, *Hennigs and Mai*, C-297/10 and C-298/10, EU:C:2011:560, paragraph 68, and of 12 December 2013, *Hay*, C-267/12, EU:C:2013:823, paragraph 27).
- 71 Moreover, it should be borne in mind that, in accordance with Article 16 of Directive 2000/78, Member States are to take the measures necessary to ensure that any provisions contrary to the principle of equal treatment which are included in, inter alia, contracts or collective agreements are, or may be, declared null and void or are amended.
- 72 In respect of the disadvantage at which Paragraph 8(1)(c) of the TV SozSich is liable to put the persons concerned, it should be noted that, according to the referring court, the condition in that provision for termination of the entitlement to payments of bridging assistance is that of becoming entitled to early payment of a retirement pension, irrespective of whether the person concerned does in fact draw a retirement pension or has applied for one. Consequently, as observed by the Advocate General in point 52 of her Opinion, payment of the bridging assistance terminates automatically.
- 73 It is true that a severely disabled worker might find himself in a situation where, for his own reasons, he prefers to receive early payment of a retirement pension, even if, as is apparent from paragraph 52 of this judgment, the result of the application of Paragraph 8(1)(c) of the TV SozSich is, in principle, that that worker’s income, when he becomes entitled to such a retirement pension, is not equivalent to that of a non-disabled worker who receives bridging assistance.

- 74 However, as observed by the Advocate General in point 54 of her Opinion, unlike a non-disabled worker, a severely disabled worker, even if he might wish to do so, cannot elect to stay in work and also receive bridging assistance until he becomes entitled to full payment of a retirement pension.
- 75 It should also be noted that severely disabled persons have specific needs stemming both from the protection their condition requires and the need to anticipate possible worsening of their condition. Regard must therefore be had to the risk that severely disabled persons may have financial requirements arising from their disability which cannot be adjusted and/or that, with advancing age, those financial requirements may increase (see, to that effect, judgment of 6 December 2012, *Odar*, C-152/11, EU:C:2012:772, paragraph 69).
- 76 Consequently, the social partners, in pursuing the legitimate aims of providing compensation for the future of workers who have been made redundant and facilitating their reintegration into employment, whilst taking account of the need to achieve a fair distribution of limited financial resources, failed to have regard to relevant elements that concern severely disabled workers specifically.
- 77 Thus, Paragraph 8(1)(c) of the TV SozSich has an excessive adverse effect on the legitimate interests of severely disabled workers and therefore goes beyond what is necessary to achieve the social policy aims pursued by the German social partners.
- 78 Therefore, the difference in treatment resulting from that provision of the TV SozSich cannot be justified under Article 2(2)(b)(i) of Directive 2000/78.
- 79 Having regard to all the foregoing considerations, the answer to the question referred is that Article 2(2) of Directive 2000/78 must be interpreted, in a case such as that in the main proceedings, as precluding a provision in a collective agreement under which the payment of bridging assistance — granted with the aim of ensuring a reasonable means of subsistence to a worker who has lost his job until he is entitled to a retirement pension under the statutory pension scheme — must cease once that worker becomes entitled to early payment of a retirement pension for severely disabled persons under that scheme.

Costs

- 80 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 (Third Chamber) hereby rules:

Article 2(2) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted, in a case such as that in the main proceedings, as precluding a provision in a collective agreement under which the payment of bridging assistance — granted with the aim of ensuring a reasonable means of subsistence to a worker who has lost his job until he is entitled to a retirement pension under the statutory pension scheme — must cease once that worker is entitled to early payment of a retirement pension for severely disabled persons under that scheme.

[Signatures]