



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

18 January 2024*

(Reference for a preliminary ruling – Directive 2000/78/EC – Equal treatment in employment and occupation – Prohibition of discrimination on grounds of disability – Accident at work – Total permanent incapacity – Termination of the employment contract – Article 5 – Reasonable accommodation)

In Case C-631/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Superior de Justicia de las Islas Baleares (High Court of Justice, Balearic Islands, Spain), made by decision of 26 September 2022, received at the Court on 7 October 2022, in the proceedings

J.M.A.R.

v

Ca Na Negreta SA,

other party:

Ministerio Fiscal,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, T. von Danwitz (Rapporteur), P.G. Xuereb, A. Kumin and I. Ziemele, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Ca Na Negreta SA, by I.M. Roa Ruiz, abogado,
- the Spanish Government, by M. Morales Puerta, acting as Agent,

* Language of the case: Spanish.

- the Greek Government, by V. Baroutas and M. Tassopoulou, acting as Agents,
- the European Commission, by F. Clotuche-Duvieusart, I. Galindo Martín and E. Schmidt, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(2), Article 4(1) and Article 5 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), read in the light of Articles 21 and 26 of the Charter of Fundamental Rights of the European Union ('the Charter') and Articles 2 and 27 of the United Nations Convention on the Rights of Persons with Disabilities, concluded in New York on 13 December 2006 and approved on behalf of the European Community by Council Decision 2010/48/EC of 26 November 2009 (OJ 2010 L 23, p. 35; 'the UN Convention').
- 2 The request has been made in proceedings between J.M.A.R. and Ca Na Negreta SA concerning the termination of J.M.A.R.'s employment contract by Ca Na Negreta on account of his total permanent incapacity to perform his normal occupation.

Legal framework

International law

- 3 Recital (e) in the preamble to the UN Convention states:

'Recognising that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others'.
- 4 Under Article 1 of that convention, entitled 'Purpose':

'The purpose of the present Convention 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.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.'
- 5 Article 2 of that convention, entitled 'Definitions', provides:

'For the purposes of the present Convention:

...

“Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

“Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

...’

- 6 Article 27(1) of that convention, entitled ‘Work and employment’, provides:

‘States Parties recognise the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realisation of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

...

- (h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
- (i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

...

- (k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.’

European Union law

- 7 Recitals 16, 17, 20 and 21 of Directive 2000/78 read as follows:

- ‘(16) The provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability.
- (17) This Directive does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training, without prejudice to the obligation to provide reasonable accommodation for people with disabilities.

...

- (20) Appropriate measures should be provided, i.e. effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources.
 - (21) To determine whether the measures in question give rise to a disproportionate burden, account should be taken in particular of the financial and other costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance.'
- 8 Article 2 of that directive, entitled 'Concept of discrimination', provides in paragraphs 1 and 2:
- '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.'
- 9 Article 3 of that directive, entitled 'Scope', states in paragraph 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:
- (a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- ...
- (c) employment and working conditions, including dismissals and pay;
- ...'

- 10 Article 4 of that directive, entitled ‘Occupational requirements’, provides in paragraph 1:

‘Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.’

- 11 In accordance with Article 5 of Directive 2000/78, entitled ‘Reasonable accommodation for disabled persons’:

‘In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.’

Spanish law

The Workers’ Statute

- 12 Article 49 of the Estatuto de los Trabajadores (Workers’ Statute), in the consolidated version approved by Real Decreto Legislativo 2/2015, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores (Royal Legislative Decree 2/2015 approving the consolidated text of the Law on the Workers’ Statute) of 23 October 2015 (BOE No 255 of 24 October 2015, p. 100224) (‘the Workers’ Statute’), provides, in paragraph 1:

‘An employment contract shall be terminated:

...

(e) in the event of the death, permanent incapacity requiring the assistance of a third party or total or absolute permanent incapacity of the worker, subject to the provisions of Article 48(2).

...’

The LGSS

- 13 The Ley General de la Seguridad Social (General Law on Social Security), in the consolidated version approved by Real Decreto Legislativo 8/2015 (Royal Legislative Decree 8/2015) of 30 October 2015 (BOE No 261 of 31 October 2015, p. 103291, and corrigendum BOE No 36 of 11 February 2016, p. 10898) (‘the LGSS’), provides in Article 193:

“Permanent incapacity for work” means the situation of a worker who, after having undergone the prescribed treatment, has serious physical or functional damage which can be objectively determined, which is likely to be permanent and which reduces or eliminates his or her working capacity. The

possibility of the worker recovering his or her working capacity does not preclude recognition of permanent incapacity for work if, medically, it is considered an uncertain or long-term possibility.

...’

14 Article 194 of the LGSS provides:

‘1. Whatever the cause, permanent incapacity for work is classified by degrees according to the percentage reduction in the capacity of the person concerned to work, which is assessed in accordance with the list of medical conditions adopted by regulation, in the following categories:

- (a) partial permanent incapacity;
- (b) total permanent incapacity;
- (c) absolute permanent incapacity;
- (d) severe disability.

2. Permanent incapacity is classified in its various degrees according to the percentage reduction in working capacity established by regulation.

In order to determine the degree of incapacity, account shall be taken of the impact of the reduction in working capacity on the performance of the profession pursued by the person concerned or on the professional group to which that occupation belonged before the occurrence of the event giving rise to the permanent incapacity.’

15 The third subparagraph of Article 196(2) of the LGSS provides:

‘The amount of the monthly allowance for total permanent incapacity resulting from a non-occupational illness may not be less than 55% of the minimum contribution base for persons over 18 years of age, calculated annually, in force on the date of payment.’

General Law on the rights of persons with disabilities

16 The Ley General de derechos de las personas con discapacidad y de su inclusión social (General Law on the rights of persons with disabilities and their social inclusion), in the consolidated version approved by Real Decreto Legislativo 1/2013 por el que se aprueba el texto refundido de la Ley General de derechos de las personas con discapacidad y de su inclusión social (Royal Legislative Decree 1/2013 approving the revised text of the General Law on the rights of persons with disabilities and their social inclusion) of 29 November 2013 (BOE No 289 of 3 December 2013, p. 95635) (‘General Law on the rights of persons with disabilities’), provides, in Article 2(m), entitled ‘Definitions’:

‘Reasonable accommodation: necessary and appropriate modifications and adjustments to the physical, social and attitudinal environment to meet the specific needs of persons with disabilities, which do not impose a disproportionate or undue burden, where needed in a particular case, in an effective and practical manner, to facilitate accessibility and participation and to ensure to persons with disabilities the enjoyment or exercise, on an equal basis with others, of all rights.’

17 Article 4 of that law, entitled ‘Rights holders’, states:

‘1. “Persons with disabilities” means individuals who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society, on an equal basis with others.

2. In addition to the persons referred to in the preceding paragraph, persons who have been recognised as having a degree of incapacity equal to or greater than 33% shall have the status of persons with disabilities for all purposes. The degree of permanent incapacity of persons affiliated to the social security scheme who receive a monthly allowance for total permanent incapacity, absolute permanent incapacity or permanent incapacity requiring the assistance of a third party, is deemed to be equal to or greater than 33% ...

...’

18 Article 40 of that law, entitled ‘Adoption of measures to prevent or compensate for the disadvantages caused by disability in order to ensure full equality at work’, provides:

‘1. In order to ensure full equality at work, the principle of equal treatment does not prevent the maintenance or adoption of specific measures intended to prevent or to compensate for the disadvantages caused by disability.

2. Employers shall take appropriate measures to adapt the workplace and enhance the accessibility of the undertaking, having regard to the needs arising in each individual case, in order to allow persons with disabilities to have access to employment, to carry out their work, to be promoted and to have access to training, unless such measures would place an excessive burden on the employer.

In order to determine whether a burden is excessive, it is necessary to consider whether it is mitigated to a sufficient degree by the measures, assistance and public subsidies applying to persons with disabilities, and to take account of the financial and the other costs entailed by those measures, the scale of the undertaking or organisation and its overall turnover.’

19 Under Article 63 of that law, entitled ‘Infringement of the right to equal opportunities’:

‘The right of persons with disabilities as defined in Article 4(1) to equal opportunities is deemed to have been breached where, on account of or on the basis of disability, there is direct or indirect discrimination, discrimination by association, harassment, failure to comply with accessibility and reasonable accommodation requirements as well as failure to comply with positive action measures provided for by law.’

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

20 J.M.A.R. had been employed by Ca Na Negreta since October 2012 as a full-time driver of a waste collection lorry. In December 2016, he suffered an accident at work which resulted in an open fracture of his right calcaneum.

21 Following that accident at work, J.M.A.R. was temporarily unable to work. On 18 February 2018, the Instituto Nacional de la Seguridad Social (National Social Security Institute, Spain) (‘the INSS’) decided to terminate that temporary incapacity and awarded him a lump sum as

compensation for permanent injury in the amount of EUR 3 120. By that decision, however, the INSS refused to recognise J.M.A.R.'s permanent incapacity for work within the meaning of Article 193 of the LGSS.

- 22 On 6 August 2018, J.M.A.R. asked Ca Na Negreta to reassign him to a post that was suitable on account of the after-effects of his accident at work. Ca Na Negreta accepted that request and J.M.A.R. moved from a position as a full-time driver of heavy motor vehicles to a position as a driver in the mobile collection points sector, which was physically less demanding, involved less driving time and was compatible with his physical limitations.
- 23 J.M.A.R. brought an action against the INSS's decision refusing to recognise his permanent incapacity for work before the competent court, which, by judgment of 2 March 2020, recognised J.M.A.R.'s total permanent incapacity to perform his normal occupation in accordance with Article 194 of the LGSS. That judgment stated, *inter alia*, that, 'irrespective of the fact that the worker has been redeployed by the undertaking and can currently work, since he has to drive for only approximately 40 minutes per day, the fact remains that the condition of his ankle and his right foot as a result of the accident prevents him from driving on a continuous basis, if he had to do this full time, as required by his normal occupation as a lorry driver'. That judgment also recognised J.M.A.R.'s right to receive a monthly allowance equal to 55% of his daily salary.
- 24 On 13 March 2020, Ca Na Negreta notified J.M.A.R. of the termination of his employment contract under Article 49(1)(e) of the Workers' Statute on grounds of his total permanent incapacity to perform his normal occupation.
- 25 In proceedings brought by J.M.A.R. against that termination, the Juzgado de lo Social No 1 de Ibiza (Social Court No 1, Ibiza, Spain), by judgment of 24 May 2021, dismissed that action on the ground that the recognition of total permanent incapacity to perform his normal occupation justified the termination of his employment contract without the employer being under any legal obligation to redeploy him to another post within the undertaking.
- 26 J.M.A.R. brought an appeal against that judgment before the Tribunal Superior de Justicia de las Islas Baleares (High Court of Justice, Balearic Islands, Spain), the referring court.
- 27 That court states that, in the present case, it is not disputed that the worker concerned is a person with a disability for the purposes of Directive 2000/78. It notes that, in any event, that finding is supported by Article 4(2) of the General Law on the rights of persons with disabilities, which confers on persons in a situation of total permanent incapacity the status of 'persons with disabilities'.
- 28 The referring court states that, under Article 49(1)(e) of the Workers' Statute, which has not been amended since 10 March 1980 and which has therefore not been adapted to take account of Directive 2000/78 and the UN Convention, a finding of total permanent incapacity to perform one's normal occupation automatically allows the termination of the employment contract without any formalities having to be complied with or any compensation, other than the monthly allowance, which, in the present case, is equal to 55% of the worker's salary, having to be paid. Moreover, that termination is not subject to compliance with any prior obligation in terms of 'reasonable accommodation', even though, in the present case, Ca Na Negreta itself had demonstrated that such accommodation was feasible as it had redeployed J.M.A.R. to a different position within the undertaking.

- 29 In that regard, the referring court cites the judgment of 10 February 2022, *HR Rail* (C-485/20, EU:C:2022:85), from which it follows that an employer is required to take appropriate measures to enable a person with a disability to have access to, participate in, or advance in employment, unless such measures would impose a disproportionate burden on the employer.
- 30 The national court also refers to the case-law of the Tribunal Supremo (Supreme Court, Spain), from which it is clear that, while total permanent incapacity does not oblige the employer to dismiss the worker and does not preclude, inter alia, that worker from being reassigned to another position within the undertaking, given that that incapacity affects his ability to perform his normal duties only and therefore does not prevent him from carrying out other tasks, that employer is not, however, required to redeploy the worker, unless it is expressly provided for by a collective agreement or by a contract.
- 31 Consequently, the referring court is uncertain whether the national legislation at issue in the main proceedings is compatible with Article 5 of Directive 2000/78, read in the light of the judgment of 10 February 2022, *HR Rail* (C-485/20, EU:C:2022:85).
- 32 In those circumstances, the Tribunal Superior de Justicia de las Islas Baleares (High Court of Justice, Balearic Islands) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Must Article 5 of [Directive 2000/78] be interpreted, having regard to recitals 16, 17, 20 and 21 of [that] directive, Articles 21 and 26 of the [Charter], and Articles 2 and 27 of the [UN Convention], as precluding the application of a national rule of law which establishes that a worker’s disability (where the worker has been declared to be totally and permanently unable to perform his or her normal occupation, with no prospect of improvement) is automatic grounds for termination of the employment contract, with no prior requirement for the employer to comply with the obligation to make “reasonable accommodation” as required by Article 5 of the directive in order to enable the individual to remain in employment (or to show that the requirement would impose a disproportionate burden)?
- (2) Must Article 2(2) and Article 4(1) of [Directive 2000/78] be interpreted, having regard to recitals 16, 17, 20 and 21 of [that] directive, Articles 21 and 26 of the [Charter], and Articles 2 and 27 of the [UN Convention], as meaning that the automatic termination on grounds of disability of the employment contract of a worker [(who has been declared to be totally and permanently unable to perform his or her normal occupation)], with no prior requirement for the employer to comply with the obligation to make “reasonable accommodation” as required by Article 5 of the directive in order to enable the individual to remain in employment (or to show that the requirement would impose a disproportionate burden), constitutes direct discrimination, even though a rule of domestic law provides for termination of the contract?’

The questions referred for a preliminary ruling

- 33 By its two questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 5 of Directive 2000/78, read in the light of Articles 21 and 26 of the Charter and Articles 2 and 27 of the UN Convention, must be interpreted as precluding national legislation which provides that an employer may terminate the employment contract on the ground that the worker is permanently unable to perform the tasks entrusted to him or her

under that contract, on account of a disability occurring during the employment relationship, without the employer first being required to make or maintain reasonable accommodation in order to enable that worker to keep his or her job, or to demonstrate, where appropriate, that such accommodation would constitute a disproportionate burden.

- 34 As regards the applicability of Directive 2000/78, it should be recalled, first, that the concept of ‘disability’ within the meaning of that directive has to be understood as referring to a limitation that results in particular from long-term 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 (judgment of 10 February 2022, *HR Rail*, C-485/20, EU:C:2022:85, paragraph 34 and the case-law cited).
- 35 Secondly, it should be pointed out that, pursuant to Article 3(1)(c), that directive applies to all persons, as regards both the public and private sectors, including public bodies, in relation to, inter alia, conditions for dismissals.
- 36 In that regard, it must be recalled that, according to the case-law, the concept of ‘dismissal’ covers, inter alia, the unilateral termination of any activity referred to in Article 3(1)(a) of Directive 2000/78 (see, to that effect, judgment of 12 January 2023, *TP (Audiovisual editor for public television)*, C-356/21, EU:C:2023:9, paragraph 62). Therefore, that concept must be interpreted as encompassing any termination of an employment contract not sought by the worker, and therefore without his or her consent (see, by analogy, judgment of 11 November 2015, *Pujante Rivera*, C-422/14, EU:C:2015:743, paragraph 48 and the case-law cited).
- 37 In the present case, first, it is not disputed that, with regard to the applicant in the main proceedings, his incapacity is the result of long-term physical impairments linked to an accident at work. According to the information provided by the referring court and by the Spanish Government, although that incapacity does not prevent the worker concerned from performing other duties for his employer or in another undertaking, the fact remains that that worker is recognised as a ‘person with a disability’, within the meaning of the national legislation transposing Article 5 of Directive 2000/78, namely Articles 4, 40 and 63 of the General Law on the rights of persons with disabilities. The limitation of the capacity of the applicant in the main proceedings, which is the result of long-term physical impairments, appears likely to hinder his full and effective participation in professional life, with the result that his situation falls within the scope of a ‘disability’ within the meaning of Directive 2000/78 and the case-law recalled in paragraph 34 of the present judgment.
- 38 Secondly, it is not disputed that the national legislation at issue in the main proceedings empowers the employer to terminate the employment contract on the ground of the worker’s total permanent incapacity to perform his normal occupation within the undertaking. The fact that the worker concerned sought recognition of that total permanent incapacity and that he was aware that that legislation conferred on his employer the right to terminate his employment contract following such recognition does not mean, in that regard, that that worker consented to the termination of that contract. Consequently, termination under that legislation is covered by ‘conditions [for] dismissals’ within the meaning of Article 3(1)(c) of Directive 2000/78, since it constitutes a termination of an employment contract not sought by the worker.
- 39 Therefore, a situation such as that at issue in the main proceedings falls within the scope of Directive 2000/78.

- 40 In order to answer the questions referred by the national court, it should be recalled, first, that Directive 2000/78 is a specific expression, within the field that it covers, of the general prohibition of discrimination laid down in Article 21 of the Charter, which prohibits any discrimination based, inter alia, on disability. Moreover, Article 26 of the Charter provides that the European Union is to recognise and respect the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community (see, to that effect, judgment of 10 February 2022, *HR Rail*, C-485/20, EU:C:2022:85, paragraph 27 and the case-law cited).
- 41 Next, it should also be borne in mind that the provisions of the UN Convention may be relied on for the purposes of interpreting those of Directive 2000/78, with the result that the latter must, as far as possible, be interpreted in a manner that is consistent with that convention (see, to that effect, judgment of 21 October 2021, *Komisija za zashtita ot diskriminatsia*, C-824/19, EU:C:2021:862, paragraph 59 and the case-law cited).
- 42 Under the third paragraph of Article 2 of that convention, the concept of ‘discrimination on the basis of disability’ covers any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. That concept includes all forms of discrimination, including denial of reasonable accommodation.
- 43 As regards such accommodation, it is clear from the wording of Article 5 of Directive 2000/78, read in the light of recitals 20 and 21 thereof, that the employer is required to take appropriate measures, that is to say effective and practical measures, taking each individual situation into account, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer (judgment of 10 February 2022, *HR Rail*, C-485/20, EU:C:2022:85, paragraph 37).
- 44 In that regard, the Court has already held that, where a worker becomes permanently incapable of remaining in his or her job because of the onset of a disability, reassignment to another job may constitute an appropriate measure in the context of reasonable accommodation within the meaning of Article 5 of Directive 2000/78, since it makes it possible for that worker to remain in employment, by enabling him or her to participate fully and effectively in professional life on an equal basis with other workers (see, to that effect, judgment of 10 February 2022, *HR Rail*, C-485/20, EU:C:2022:85, paragraphs 41 and 43).
- 45 In that context, it should be noted that Article 5 of Directive 2000/78 does not oblige an employer to take measures which would impose a disproportionate burden on it. In that regard, it follows from recital 21 of that directive that, in order to determine whether the measures in question give rise to a disproportionate burden, account should be taken in particular of the financial costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance. In addition, it should be stated that, in any event, the possibility of assigning a disabled person to another job is only available where there is at least one vacancy that the worker in question is capable of holding (judgment of 10 February 2022, *HR Rail*, C-485/20, EU:C:2022:85, paragraphs 45 and 48).

- 46 Consequently, the concept of ‘reasonable accommodation’ requires that a worker who, owing to his or her disability, has been declared incapable of performing the essential functions of the post that he or she occupies, be assigned to another position for which he or she has the necessary competence, capability and availability, unless that measure imposes a disproportionate burden on the employer (see, to that effect, judgment of 10 February 2022, *HR Rail*, C-485/20, EU:C:2022:85, paragraph 49).
- 47 In the present case, it is clear from the national legislation at issue in the main proceedings that it allows a worker to be dismissed as soon as he or she has been formally recognised as unfit to occupy his or her post because of the onset of a disability, without requiring the employer first to take appropriate measures within the meaning of Article 5 of Directive 2000/78 or to maintain the appropriate measures already taken. It is apparent from the information provided by the referring court that the applicant in the main proceedings had been reassigned to another position within the undertaking between 6 August 2018 and 13 March 2020, the date of his dismissal, which was notified by the employer 11 days after the formal recognition of his incapacity to perform his previous normal occupation. According to the referring court, the new position to which the employee had been reassigned, for more than a year, appeared to be compatible with the physical limitations resulting from his accident at work.
- 48 As the Greek Government and the European Commission have pointed out in their written observations, such legislation appears to have the effect, subject to verification by the referring court, of exempting the employer from its obligation to make or, where appropriate, to maintain reasonable accommodation, such as reassignment to another post, even if the worker concerned has the necessary competence, capability and availability to perform the essential functions of that other post, in accordance with recital 17 of that directive and the case-law referred to in paragraph 46 of the present judgment. Nor does that legislation appear to require the employer to demonstrate that such reassignment would be such as to impose on it a disproportionate burden, within the meaning of the case-law referred to in paragraph 45 above, before dismissing the worker.
- 49 The fact that, under the national legislation at issue in the main proceedings, the total permanent incapacity is recognised at the worker’s request and entitles him to a social security benefit, namely a monthly allowance, while retaining the possibility of performing other duties, is irrelevant in that regard.
- 50 Such national legislation, under which a worker with a disability is forced to run the risk of losing his or her job in order to be able to receive a social security benefit, undermines the effectiveness of Article 5 of Directive 2000/78, read in the light of Article 27(1) of the UN Convention, in accordance with which the realisation of the right to work must be safeguarded and promoted, including for those who acquire a disability during the course of employment, as well as job retention. By treating ‘total permanent incapacity’, which concerns only normal duties, in the same way as the death of a worker or ‘absolute permanent incapacity’ which, according to the written observations of the Spanish Government, means being unfit to perform any work whatsoever, that national legislation runs counter to the objective of the integration of persons with disabilities, set out in Article 26 of the Charter.
- 51 Lastly, as regards the argument put forward by the Spanish Government in its written observations that the Member State concerned has exclusive competence to organise its social security system and to determine the conditions for the granting of social security benefits, it

must be recalled that, when exercising that power, that Member State must comply with EU law (see, to that effect, judgment of 30 June 2022, *INSS (Combination of total occupational invalidity pensions)*, C-625/20, EU:C:2022:508, paragraph 30 and the case-law cited).

- 52 Thus, national social security legislation cannot contravene, inter alia, Article 5 of Directive 2000/78, read in the light of Articles 21 and 26 of the Charter, by making a worker's disability a ground for dismissal, without the employer first being required to make or maintain reasonable accommodation in order to enable that worker to keep his or her job, or to demonstrate, where appropriate, that such accommodation would constitute a disproportionate burden, in accordance with the case-law referred to in paragraph 45 of the present judgment.
- 53 Consequently, the answer to the questions referred must be that Article 5 of Directive 2000/78, read in the light of Articles 21 and 26 of the Charter and Articles 2 and 27 of the UN Convention, must be interpreted as precluding national legislation which provides that an employer may terminate the employment contract on the ground that the worker is permanently unable to perform the tasks entrusted to him or her under that contract, on account of a disability occurring during the employment relationship, without the employer first being required to make or maintain reasonable accommodation in order to enable that worker to keep his or her job, or to demonstrate, where appropriate, that such accommodation would constitute a disproportionate burden.

Costs

- 54 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 (First Chamber) hereby rules:

Article 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, read in the light of Articles 21 and 26 of the Charter of Fundamental Rights of the European Union and Articles 2 and 27 of the United Nations Convention on the Rights of Persons with Disabilities, concluded in New York on 13 December 2006 and approved on behalf of the European Community by Council Decision 2010/48/EC of 26 November 2009, must be interpreted as precluding national legislation which provides that an employer may terminate the employment contract on the ground that the worker is permanently unable to perform the tasks entrusted to him or her under that contract, on account of a disability occurring during the employment relationship, without the employer first being required to make or maintain reasonable accommodation in order to enable that worker to keep his or her job, or to demonstrate, where appropriate, that such accommodation would constitute a disproportionate burden.

[Signatures]