



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

21 October 2021 *

(Reference for a preliminary ruling – Social policy – Equal treatment in employment and occupation – Directive 2000/78/EC – Prohibition of discrimination on grounds of disability – Article 2(2)(a) – Article 4(1) – Article 5 – Charter of Fundamental Rights of the European Union – Articles 21 and 26 – United Nations Convention on the Rights of Persons with Disabilities – Duties of juror in criminal proceedings – Blind person – Total exclusion from participation in criminal proceedings)

In Case C-824/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), made by decision of 31 October 2019, received at the Court on 12 November 2019, in the proceedings

TC,

UB

v

Komisia za zashtita ot diskriminatsia,

VA,

intervener:

Varhovna administrativna prokuratura,

THE COURT (Second Chamber),

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

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Bulgarian.

after considering the observations submitted on behalf of:

- VA, by herself,
- the Polish Government, by B. Majczyna, acting as Agent,
- the Portuguese Government, by L. Inez Fernandes and by A. Pimenta, J. Marques and P. Barros da Costa, acting as Agents,
- the European Commission, by D. Martin and N. Nikolova, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 April 2021,

gives the following

Judgment

- 1 The request for a preliminary concerns Article 5(2) of the United Nations Convention on the Rights of Persons with Disabilities, which was approved on behalf of the European Community by Council Decision 2010/48/EC of 26 November 2009 (OJ 2010 L 23, p. 35; ‘the UN Convention’) and Article 2(1) and (3) and Article 4(1) 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 That request was made in the context of proceedings between, on the one hand, TC and UB and, on the other, the Komisia za zashtita ot diskriminatsia (Commission for Protection against Discrimination, Bulgaria) and VA, regarding that commission’s decision to impose fines on them, as court president and judge of a criminal chamber, for discrimination against VA, a juror of that chamber.

Legal context

International law

- 3 Article 1 of the UN Convention provides:

‘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.’

- 4 Article 5 of that convention, headed ‘Equality and non-discrimination’, provides:

‘1. States Parties recognise that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
 3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.
 4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.'
- 5 Article 27 of the UN Convention, headed 'Work and employment', provides in paragraph 1 thereof:

'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:

- (a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

...'

European Union law

- 6 Recitals 16, 20, 21 and 23 of Directive 2000/78 state:

'(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.

...

(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.

...

(23) In very limited circumstances, a difference of treatment may be justified where a characteristic related to religion or belief, disability, age or sexual orientation constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate. Such circumstances should be included in the information provided by the Member States to the Commission.'

7 Article 1 of that directive, headed 'Purpose', states:

'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.'

8 Article 2 of that directive, headed 'Concept of discrimination', 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;

...'

9 Article 3 of the same directive, headed 'Scope', states in paragraph 1 thereof:

'Within the limits of the areas of competence conferred on the [European Union], 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 Directive 2000/78, headed 'Occupational requirements', provides in paragraph 1 thereof:

'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 Article 5 of that directive, headed ‘Reasonable accommodation for disabled persons’, provides:

‘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.’

Bulgarian law

- 12 Article 6 of the Constitution (DV No°56 of 13 July 1991), in the version applicable to the facts in the main proceedings, provides:

‘(1) All persons are born free and equal in dignity and rights.

(2) All citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, national or social origin, ethnic self-identity, sex, religion, education, opinion, political affiliation, personal or social status or property status.’

- 13 Under Article 48 of that constitution:

‘(1) Citizens shall have the right to work. The state shall ensure that the conditions for the exercise of this right are established.

(2) The State shall secure the conditions for the exercise of the right to work for persons with physical and mental disabilities. ...’

- 14 It is apparent from Article 4(1) of the Zakon za zashtita ot diskriminatsia (Law on protection against discrimination) (DV No°86 of 30 September 2003), in the version applicable to the facts in the main proceedings (‘the Law on discrimination’), that all direct or indirect discrimination based, inter alia, on disability, is prohibited.

- 15 Under Article 7(1)(2) of the Law on discrimination:

‘The following shall not constitute discrimination:

...

2. the difference in treatment of a person based on a characteristic related to one of the grounds referred to in Article 4(1), where that characteristic constitutes a genuine and determining occupational requirement by reason of the nature of a particular occupation or activity or of the context in which that occupation [or that activity] is carried out, the objective is legitimate and the requirement does not go beyond what is necessary to achieve it’.

- 16 Article 66 of the Zakon za sadebnata vlast (Law on the judiciary) (DV No°64 of 7 August 2007), in the version applicable to the facts in the main proceedings (‘the Law on the judiciary’), in the cases provided for by law, the formation of a court hearing a case at first instance is also to include jurors, who are to have the same rights and obligations as judges.

17 Under Article 67(1) of the Law on the judiciary:

‘Any Bulgarian citizen who is capable of exercising his or her rights and who:

1. is between 21 and 68 years old;
2. has a current address in a municipality within the judicial district of the court to which he or she is applying;
3. has completed at least secondary education;
4. has not been convicted of an intentional offence, even if the conviction has been spent; and
5. does not suffer from any mental illness;

may be appointed as a juror.’

18 Article 8(1) of the Nakazatelno-protsesualen kodeks (Code of Criminal Procedure) (DV No°86 of 28 October 2005), in the version applicable to the facts in the main proceedings (‘the Code of Criminal Procedure’), provides:

‘In the cases and according to the procedures laid down by this Code, jurors shall participate in the formations of the courts.’

19 Article 13(1) of the Code of Criminal Procedure provides that the court, the Public Prosecutor’s Office and the investigating authorities, within the limits of their competence, are required to take all measures to establish the objective truth and, in Article 13(2) thereof, that the objective truth is to be established according to the procedures and with the means provided for by that code.

20 According to Article 14(1) of the Code of Criminal Procedure, the court, the Public Prosecutor’s Office and the investigating authorities are to reach a decision on the basis of their personal conviction, from objective, close and complete examination of all the circumstances of the case at hand, and guided by the provisions of the law.

21 According to Article 18 of the Code of Criminal Procedure, the court, the Public Prosecutor’s Office and the investigating authorities are to reach a decision on the basis of the evidence which they have personally collected and examined, except where that code provides otherwise.

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

22 VA has a permanently reduced capacity to work due to sight loss, as verified by an examination carried out in 1976. She studied law at university, passed the vocational aptitude test in 1977 and then worked for the Association for the Blind and in the organisations of the European Blind Union.

- 23 In 2014, VA was admitted as a juror by the Sofiyski gradski sad (Sofia City Court, Bulgaria), following a procedure conducted by the Sofia City Council. She was assigned to the Sofiyski rayonen sad (District Court, Sofia, Bulgaria) and, by lot, to the Sixth Criminal Chamber of that court, in which Judge UB sat, together with three other jurors. On 25 March 2015, she was sworn in before that district court in that capacity.
- 24 In the period from 25 March 2015 to 9 August 2016, VA did not participate in a single oral procedure in criminal proceedings. In May 2015, she sent the President of the Sofiyski rayonen sad (District Court, Sofia), namely TC, a request to be assigned to another judge, but she received no reply.
- 25 On 24 September 2015, VA lodged a complaint with the Commission for Protection against Discrimination, claiming that she had been treated less favourably based on her disability, by Judge UB, in so far as Judge UB had not allowed her to participate in any criminal proceedings, and by TC, who had not acted on her request to be reassigned in order to be able to exercise her right to work as a juror. In response, TC and UB relied, in particular, on the nature of the duties of jurors, the need for particular physical characteristics and the existence of a legal objective, namely compliance with the principles of the Code of Criminal Procedure, which justified the different treatment of VA on the basis of a characteristic related to disability, in accordance with Article 7(1)(2) of the Law on discrimination.
- 26 By decision of 6 March 2017, the Commission for Protection against Discrimination found, after hearing TC and UB, that they had discriminated against VA on the ground of disability, in particular for the purposes of Article 4 of the Law on discrimination, and imposed a fine on each of them, of 250 and 500 leva (BGN), respectively (approximately EUR 130 and EUR 260).
- 27 Both TC and UB brought actions against the decision of the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia, Bulgaria), which dismissed those actions. That court held, in particular, that the imposition of restrictions, as a matter of principle, on access to a particular profession or activity, such as that of a juror, on the ground that the disability in question would make it impossible to exercise it fully, was unlawful. It is true that the particularities of criminal procedure require that such a juror comply with the fundamental principles of that procedure, that is to say, in relation to formation of the court, immediacy, the establishment of the objective truth and arriving at a personal conviction. However, the presumption that the existence of a disability in all cases deprives a person of the ability to comply with those principles constitutes discrimination. That court added that the fact that VA had participated in a series of hearings in criminal proceedings as from 9 August 2016, when a legislative reform introducing the electronic allocation of jurors had come into force, supported those findings.
- 28 TC and UB each brought appeals on points of law against the decisions of the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) before the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria). In support of his appeal, TC argued that the first-instance court should have applied Article 7(1)(2) of the Law on discrimination, concerning the existence of a genuine and determining occupational requirement. Given the nature of the duties of jurors, those duties cannot be carried out by persons whose disabilities result in an infringement of the principles enshrined in the Code of Criminal Procedure. UB, for her part, argued that that court wrongly gave precedence to the Law on discrimination over the higher-ranking Code of Criminal Procedure and the principles enshrined in that code, with which

she, as a criminal judge, was required to comply when examining cases brought before the court, and to ensure that all members of the formation of the court treat the evidence on the file in the same way and directly assess the conduct of the parties.

- 29 In that context, having regard to the rules of criminal procedure, the referring court notes that it is not clear whether the unequal treatment of a person such as VA, with a disability such as blindness, in the pursuit of the activity of juror, is lawful in the light of the provisions contained in the UN Convention, the Charter of Fundamental Rights of the European Union ('the Charter'), and Directive 2000/78, which seek to ensure equal treatment in employment and occupation for people with disabilities.
- 30 In those circumstances, the Varhoven administrativen sad (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Does the interpretation of Article 5(2) of the [UN Convention] and of Article [2](1), (2) and (3) and Article 4(1) of [Directive 2000/78] lead to the conclusion that it is permissible for a person without the ability to see to be able to work as a juror and participate in criminal proceedings, or:
- (2) Is the specific disability of a permanently blind person a characteristic which constitutes a genuine and determining requirement of the activity of a juror, the existence of which justifies a difference of treatment and does not constitute discrimination based on the characteristic of "disability"?''

Consideration of the questions referred

- 31 As a preliminary point, it should be noted that, although the referring court did not make reference in the wording of its questions to the provisions of the Charter, that court raises questions, as is apparent from the reference for a preliminary ruling, regarding the compatibility of excluding a blind person, such as VA, from performing duties as a juror in criminal proceedings, with regard to the provisions of the Directive 2000/78, the UN Convention and the Charter.
- 32 It should be remembered that that directive is a specific expression, within the field that it covers, of the general principle of non-discrimination now enshrined in Article 21 of the Charter (judgment of 26 January 2021, *Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie*, C-16/19, EU:C:2021:64, paragraph 33 and the case-law cited).
- 33 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.
- 34 In those circumstances, it must be held that, by its questions, which should be examined together, the referring court asks, in essence, whether Article 2(2) and Article 4(1) of Directive 2000/78, read in the light of Articles 21 and 26 of the Charter and of the UN Convention, must be interpreted as totally excluding a blind person from any opportunity to perform duties as a juror in criminal proceedings.

- 35 At the outset, it should be borne in mind that 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 (judgment of 15 July 2021, *Tartu Vangla*, C-795/19, EU:C:2021:606, paragraph 26 and the case-law cited).
- 36 As follows from Article 3(1)(a) and (c) of Directive 2000/78, within the limits of the areas of competence conferred on the European Union, that directive applies to all persons, both in the public and private sectors, including public bodies, as regards, inter alia, conditions for access to employment as well as employment and working conditions.
- 37 It is apparent from the reference for a preliminary ruling, first of all, that the activities of a juror constitute paid, professional activity; next, that VA was selected to carry out those activities and was assigned to a criminal chamber of a court; and, lastly, that she was unable, in practice, during the period from 25 March 2015 to 9 August 2016, to carry out those activities and, therefore, access such employment.
- 38 It follows that, in such a situation, both conditions of access to employment, within the meaning of Article 3(1)(a) of the Directive 2000/78 and the employment and working conditions referred to in Article 3(1)(c) of that directive are at issue.
- 39 Furthermore, it is not disputed that VA has a ‘disability’, within the meaning of Directive 2000/78, in so far as she suffers from permanent loss of sight, specifically that, according to settled case-law, the concept of ‘disability’ must be understood as referring to a limitation of capacity which 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 (see, to that effect, judgment of 11 September 2019, *Nobel Plastiques Ibérica*, C-397/18, EU:C:2019:703, paragraph 41 and the case-law cited).
- 40 Therefore, a situation such as that at issue in the main proceedings falls within the scope of that directive.
- 41 As regards, first, the existence of a difference in treatment based on disability, it must be remembered that, under Article 2(1) of Directive 2000/78, for the purposes of that provision, ‘principle of equal treatment’ means no direct or indirect discrimination, on any of the grounds referred to in Article 1 thereof. Article 2(2)(a) of that directive specifies that direct discrimination occurs 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 listed in Article 1 of that directive, including disability.
- 42 In the present case, it is apparent from the information in the reference for a preliminary ruling that, from 25 March 2015 to 9 August 2016, VA was not allowed to participate in any proceedings of the chamber to which she was assigned, due to her blindness. She appears thus to have been treated less favourably than the other jurors assigned to that chamber in a comparable situation but who were not blind, on the grounds of her disability, which constitutes a difference in treatment directly based on disability, within the meaning of Article 2(2)(a) of Directive 2000/78.

- 43 As regards, secondly, the question of whether such a difference in treatment is capable of being justified on the basis of Article 4(1) of Directive 2000/78, it must be remembered that, according to the terms of that provision, 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 of that directive 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.
- 44 In that regard, the Court has found that it is not the ground on which the difference of treatment is based but a characteristic related to that ground which must constitute a genuine and determining occupational requirement (judgment of 15 November 2016, *Salaberria Sorondo*, C-258/15, EU:C:2016:873, paragraph 33 and the case-law cited).
- 45 In so far as it allows a derogation from the principle of non-discrimination, Article 4(1) of Directive 2000/78, read in the light of recital 23 thereof, which refers to ‘very limited circumstances’ in which such a difference of treatment may be justified, must be interpreted strictly (judgment of 15 July 2021, *Tartu Vangla*, C-795/19, EU:C:2021:606, paragraph 33 and the case-law cited).
- 46 As regards the objective put forward for the purposes of justifying the unfavourable treatment reserved to VA basis of her disability, TC and UB claim that VA’s exclusion from participation in the hearings of the criminal chamber to which she had been assigned until the month of August 2016 sought to ensure full compliance with the principles of the Code of Criminal Procedure, in particular the principle of immediacy and the direct assessment of evidence for the purposes of establishing the objective truth stemming from Articles 14 and 18 of that code.
- 47 TC and UB submit that the duties of a juror cannot be carried out by persons with a disability such as blindness and would, in principle, require possession of particular physical characteristics, such as vision.
- 48 However, it must be remembered that, although Article 67(1) of the Law on the judiciary provides that a juror must, in particular, be capable of exercising his or her rights and must not suffer from any mental illness, according to the information in the reference for a preliminary ruling, that law does not impose any requirement on the physical capacity of a juror or provide any grounds for exclusion by reason of a physical handicap such as blindness.
- 49 It is apparent from that same information that electronic allocation of jurors was put in place from 9 August 2016 after a legislative reform came into force, so that VA participated in a series of hearings in criminal proceedings from that date. The electronic allocation of jurors provided by the national legislation at issue in the main proceedings appears therefore to intervene independently of considerations relating to the individuals of those juries as matters they ought to deal with, which is a matter for the national court to determine.
- 50 That being so, according to the case-law of the Court, the possession of particular physical capabilities may be regarded as a ‘genuine and determining occupational requirement’, within the meaning of Article 4(1) of Directive 2000/78, for the purposes of employment in certain professions such as firefighter or police officer. Similarly, the fact that his or her auditory acuity

must satisfy minimum standards of sound perception laid down by national legislation may be regarded as such a requirement for the purposes of employment as a prison officer (see, to that effect, judgment of 15 July 2021, *Tartu Vangla*, C-795/19, EU:C:2021:606, paragraphs 40 and 41).

- 51 The Court has also held that vision has an essential function for driving power-driven vehicles, so that a requirement for minimum visual acuity imposed by the EU legislature for the purpose of employment as a lorry driver is in accordance with EU law with regard to the objective of ensuring road safety (see, to that effect, judgment of 22 May 2014, *Glatzel*, C-356/12, EU:C:2014:350, paragraphs 54 and 72).
- 52 Likewise, by reason of the nature of a juror's duties in criminal proceedings and the context in which they are carried out, which may in certain cases involve examination and assessment of visual evidence, vision may also be regarded as a 'genuine and determining occupational requirement' for the activity of juror in such proceedings, within the meaning of Article 4(1) of Directive 2000/78, in so far as such examination and assessment of that evidence cannot be made by means of, inter alia, medico-technical equipment.
- 53 Furthermore, the objective relied on by TC and UC of ensuring full compliance with the principles of criminal proceedings, including those of immediacy and direct assessment of evidence, is capable of constituting a legitimate aim, within the meaning of Article 4(1) of Directive 2000/78.
- 54 Consequently, it is important to ascertain whether the measure imposed on VA in the case in the main proceedings, consisting of totally excluding her from performing the duties of a juror in criminal proceedings, is appropriate for achieving the objective pursued and whether it goes beyond what is necessary to achieve it. As concerns that proportionality, regard must be had to the fact that, under Article 5 of Directive 2000/78, read in the light of recitals 20 and 21 thereof, employers are to 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 unless such measures would impose a disproportionate burden on the employer (see, to that effect, judgment of 15 July 2021, *Tartu Vangla*, C-795/19, EU:C:2021:606, paragraphs 42 and 48 and the case-law cited).
- 55 As regards the appropriateness of that measure, it must be observed that such a measure does indeed contribute towards compliance with the Code of Criminal Procedure with respect to the principle of immediacy and to the direct assessment of evidence.
- 56 However, as regards the necessity of that measure, it must be noted that VA was totally excluded from participating in the matters dealt with by the criminal court to which she had been assigned, without any evaluation of her individual ability to perform her duties and without any investigation of the possibility of rectifying any difficulties that may arise.
- 57 Incidentally, as indicated in paragraph 54 of the present case, employers have to make reasonable accommodation for disabled persons, where needed in a particular case. Under recital 16 of Directive 2000/78, 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. In that regard, the Court has specified that the concept of 'reasonable accommodation' should be understood broadly as referring to the elimination of the various barriers that hinder the full and effective participation of persons with disabilities in professional life on an equal basis with other workers. Moreover, recital 20 of that directive contains, in that regard, a list of reasonable

accommodation measures of a physical, organisational or educational nature, which is not exhaustive (judgment of 15 July 2021, *Tartu Vangla*, C-795/19, EU:C:2021:606, paragraph 48 and the case-law cited).

- 58 That obligation must be read in the light of Article 26 of the Charter, which sets out the principle of the integration of persons with disabilities, so that they benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.
- 59 Such an obligation is also enshrined in the UN Convention, the provisions of which may be relied on for the purposes of interpreting those of Directive 2000/78, so that the latter must, as far as possible, be interpreted in a manner that is consistent with that convention (judgment of 15 July 2021, *Tartu Vangla*, C-795/19, EU:C:2021:606, paragraph 49 and the case-law cited).
- 60 However, Article 5(3) of the UN Convention stipulates that, in order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.
- 61 Moreover, Article 5(3) of the UN Convention has an inclusive purpose promoting equality for disabled persons and eliminating discrimination, as also shown by Article 27 of that convention, recognising their right to work, on an equal basis with others, particularly the opportunity to earn a living by accomplishing work freely chosen or accepted in a labour market and in a work environment that is open, inclusive and accessible to persons with disabilities.
- 62 In the present case, as is apparent from the information in the reference for a preliminary ruling, VA was excluded from any participation in criminal proceedings, irrespective of the matters concerned and without any investigation as to whether reasonable accommodation, such as material, personal or organisational assistance could be offered to her.
- 63 It also appears, subject to determination by the referring court, that that measure goes beyond what is necessary, in so far as it is clear from the reference for a preliminary ruling that, after the introduction of electronic allocation of jurors in August 2016, VA participated, in that capacity, in the judgment of numerous criminals matters. As noted both by the Commission in its written observations and by the Advocate General in point 100 of his Opinion, that fact is such as to indicate that VA is capable of performing those duties in accordance with the rules of criminal procedure.
- 64 Having regard to the foregoing, the answer to the questions raised is that Article 2(2)(a) and Article 4(1) of the Directive 2000/78, read in the light of Articles 21 and 26 of the Charter and of the UN Convention, must be interpreted as meaning that they preclude that a blind person be totally deprived of any possibility of performing the duties of a juror in criminal proceedings.

Costs

- 65 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 (Second Chamber) hereby rules:

Article 2(2)(a) and Article 4(1) 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 of the United Nations Convention on the Rights of Persons with Disabilities, approved on behalf of the European Community by Council Decision 2010/48/EC of 26 November 2009, must be interpreted as meaning that they preclude that a blind person be totally deprived of any possibility of performing the duties of a juror in criminal proceedings.

[Signatures]