



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

16 July 2015*

(Directive 2000/43/EC — Principle of equal treatment between persons irrespective of racial or ethnic origin — Urban districts lived in mainly by persons of Roma origin — Placing of electricity meters on pylons forming part of the overhead electricity supply network, at a height of between six and seven metres — Concepts of ‘direct discrimination’ and ‘indirect discrimination’ — Burden of proof — Possible justification — Prevention of tampering with electricity meters and of unlawful connections — Proportionality — Widespread nature of the measure — Offensive and stigmatising effect of the measure — Directives 2006/32/EC and 2009/72/EC — Inability of final consumers to monitor their electricity consumption)

In Case C-83/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad Sofia-grad (Bulgaria), made by decision of 5 February 2014, received at the Court on 17 February 2014, in the proceedings

CHEZ Razpredelenie Bulgaria AD

v

Komisia za zashtita ot diskriminatsia,

third parties:

Anelia Nikolova,

Darzhavna Komisia za energiyno i vodno regulirane,

THE COURT (Grand Chamber),

composed of K. Lenaerts, Vice-President, acting as President, A. Tizzano, R. Silva de Lapuerta, M. Ilešič, S. Rodin and K. Jürimäe, Presidents of Chambers, A. Rosas, E. Juhász, J. Malenovský, D. Šváby, A. Prechal (Rapporteur), F. Biltgen and C. Lycourgos, Judges,

Advocate General: J. Kokott,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 13 January 2015,

* Language of the case: Bulgarian.

after considering the observations submitted on behalf of:

- CHEZ Razpredelenie Bulgaria AD, by A. Ganev, V. Bozhilov and A. Dzhingov, lawyers,
- Komisia za zashtita ot diskriminatsia, by A. Strashimirova, acting as Agent,
- Ms Nikolova, by S. Cox, Barrister, and M. Ferschtman and Y. Grozev, lawyers,
- the Bulgarian Government, by E. Petranova and D. Drambozova, acting as Agents,
- the European Commission, by D. Martin and D. Roussanov, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 March 2015,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 1 and Article 2(1) and (2)(a) and (b) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22) and of Article 21 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in proceedings by which CHEZ Razpredelenie Bulgaria AD ('CHEZ RB') seeks the annulment of a decision of the Komisia za zashtita ot diskriminatsia (Commission for Protection against Discrimination; 'the KZD') by which it ordered CHEZ RB to bring discrimination against Ms Nikolova to an end and to refrain from discriminatory behaviour of that type in the future.

Legal context

EU law

Directive 2000/43

- 3 Recitals 2, 3, 9, 12, 13, 15, 16 and 28 in the preamble to Directive 2000/43 state:
 - '(2) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States, and should respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms[, signed in Rome on 4 November 1950], and as they result from the constitutional traditions common to the Member States, as general principles of Community law.
 - (3) The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all Forms of Discrimination Against Women, the International Convention on the Elimination of all Forms of Racial Discrimination and the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories.

...

- (9) Discrimination based on racial or ethnic origin may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity. It may also undermine the objective of developing the European Union as an area of freedom, security and justice.

...

- (12) To ensure the development of democratic and tolerant societies which allow the participation of all persons irrespective of racial or ethnic origin, specific action in the field of discrimination based on racial or ethnic origin should go beyond access to employed and self-employed activities and cover areas such as education, social protection including social security and healthcare, social advantages and access to and supply of goods and services.
- (13) To this end, any direct or indirect discrimination based on racial or ethnic origin as regards the areas covered by this Directive should be prohibited throughout the Community. ...

...

- (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.
- (16) It is important to protect all natural persons against discrimination on grounds of racial or ethnic origin. Member States should also provide, where appropriate and in accordance with their national traditions and practice, protection for legal persons where they suffer discrimination on grounds of the racial or ethnic origin of their members.

...

- (28) ... the objective of this Directive, namely ensuring a common high level of protection against discrimination in all the Member States, cannot be sufficiently achieved by the Member States ...'

⁴ As provided in Article 1 of Directive 2000/43, '[t]he purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment'.

⁵ Article 2 of Directive 2000/43, 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 based on racial or ethnic origin.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;

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

3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1, when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. ...

...'

6 Article 3 of Directive 2000/43, headed 'Scope', states in paragraph 1(h):

'Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons ... in relation to:

...

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

7 Article 6 of Directive 2000/43, headed 'Minimum requirements', provides in paragraph 1:

'Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.'

8 Article 8 of Directive 2000/43, headed 'Burden of proof', provides in paragraph 1:

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

Directive 2006/32/EC

9 Recital 29 in the preamble to Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC (OJ 2006 L 114, p. 64) stated:

'In order to enable final consumers to make better-informed decisions as regards their individual energy consumption, they should be provided with a reasonable amount of information thereon and with other relevant information ... In addition, consumers should be actively encouraged to check their own meter readings regularly.'

10 The first subparagraph of Article 13(1) of Directive 2006/32 provided:

'Member States shall ensure that, in so far as it is technically possible, financially reasonable and proportionate in relation to the potential energy savings, final customers for electricity ... are provided with competitively priced individual meters that accurately reflect the final customer's actual energy consumption and that provide information on actual time of use.'

Directive 2009/72/EC

- 11 Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55) provides in Article 3(3) and (7):

‘3. Member States shall ensure that all household customers ... enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable, transparent and non-discriminatory prices. ...

...

7. Member States shall take appropriate measures to protect final customers ... As regards at least household customers, those measures shall include those set out in Annex I.’

- 12 As provided in paragraph 1(h) and (i) of Annex I to Directive 2009/72:

‘1. ... the measures referred to in Article 3 are to ensure that customers:

...

(h) have at their disposal their consumption data ...

(i) are properly informed of actual electricity consumption and costs frequently enough to enable them to regulate their own electricity consumption. ...’

Bulgarian law

Law on protection against discrimination

- 13 Article 4 of the Law on protection against discrimination (Zakon za zashtita ot diskriminatsia; ‘the ZZD’) provides:

‘(1) All direct or indirect discrimination on grounds of ... race, nationality, ethnicity, ... personal situation ... shall be prohibited.

(2) Direct discrimination shall be taken to occur whenever, on the basis of characteristics mentioned in paragraph 1, one person is treated less favourably than another is, has been or would be treated in comparable or similar conditions.

(3) Indirect discrimination shall be taken to occur where, on the basis of characteristics mentioned in paragraph 1, one person is placed in a less favourable position compared with other persons by an apparently neutral provision, criterion or practice, unless that provision, criterion or practice is objectively justified having regard to a legitimate aim and the means of achieving that aim are appropriate and necessary.’

- 14 Points 7 to 9 of Paragraph 1 of the Supplementary Provisions of the ZZD state:

‘For the purposes of this law:

Point 7. “unfavourable treatment” means: any act, action or omission which directly or indirectly prejudices rights or legitimate interests.

Point 8. “on the basis of characteristics mentioned in Article 4(1)” means: on the basis of the actual — present or past — or the presumed existence of one or more such characteristics possessed by the person discriminated against or a person connected with or assumed to be connected with that person, if such connection is the basis for the discrimination.

Point 9. “Connected persons” are: ... persons who, for other reasons, may be regarded as directly or indirectly dependent on the victim, where that connection is the cause of the discrimination; ...’

15 Article 40(1) and (2) of the ZZD provides:

‘1. The [KZD] is a specialised independent State body for prevention of discrimination, protection against discrimination and ensuring equal opportunities.

2. The KZD shall monitor the application of and compliance with this law ...’

Law on energy

16 Article 10 of the Law on energy (Zakon za energetikata; ‘the ZE’) provides that ‘[a]ctivities in the energy sector ... shall be regulated by the State Commission for Energy and Water Regulation (Darzhavna Komisia za energiyno i vodno regulirane), ... a specialised independent State body’.

17 Article 104a(4) of the ZE provides:

‘The published general conditions shall enter into force for the final customer even without express written acceptance.’

18 Article 120(1) and (3) of the ZE states:

‘1. The electricity supplied to final customers shall be measured by commercial measuring instruments belonging to the operator of the electricity transmission or distribution network ...

...

3. The operator of the electricity transmission or distribution network shall determine the type and number of the measuring instruments and equipment ... and the place where they are installed.’

General conditions of CHEZ RB

19 CHEZ RB’s general conditions, as approved by the Darzhavna Komisia za energiyno i vodno regulirane, state in Article 27:

‘1. Commercial measuring instruments ... shall be placed in such a way that the customer may visually check the readings.

2. If, in order to protect the life and health of the inhabitants, property, the quality of the electricity, the continuity of the electricity supply or the safety and reliability of the electricity supply system, commercial measuring instruments are installed in places to which access is difficult, the electricity distribution undertaking is required to ensure at its own cost the possibility of making a visual check within three days of a written request to that effect from the customer.’

20 As regards that possibility of a visual check, CHEZ RB's general conditions provide that it is to send a vehicle equipped with a lifting platform, enabling its employees to read the electricity meters in an elevated position and transmit that information to the customer. In addition, it remains possible for the customer to pay to have a second meter, a 'checking' meter, installed in his home.

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

21 Ms Nikolova runs, as a sole trader, a grocer's shop in the 'Gizdova mahala' district of the town of Dupnitsa (Bulgaria), a district inhabited mainly by persons of Roma origin.

22 In 1999 and 2000, CHEZ RB installed the electricity meters for all the consumers of that district on the concrete pylons forming part of the overhead electricity supply network, at a height of between six and seven metres, whereas in the other districts the meters installed by CHEZ RB are placed at a height of 1.70 metres, usually in the consumer's property, on the façade or on the wall around the property ('the practice at issue').

23 In December 2008, Ms Nikolova lodged an application with the KZD in which she contended that the reason for the practice at issue was that most of the inhabitants of the 'Gizdova mahala' district were of Roma origin, and that she was accordingly suffering direct discrimination on the grounds of nationality ('narodnost'). She complained in particular that she was unable to check her electricity meter for the purpose of monitoring her consumption and making sure that the bills sent to her, which in her view overcharged her, were correct.

24 On 6 April 2010, the KZD issued a decision concluding that the practice at issue constituted prohibited indirect indiscriminate on the grounds of nationality within the meaning of Article 4(1) and (3) of the ZZD.

25 That decision was annulled by judgment of the Varhoven administrativen sad (Supreme Administrative Court) of 19 May 2011, in particular on the ground that the KZD had not indicated the other nationality in relation to the holders of which Ms Nikolova had suffered discrimination. The case was referred back to the KZD.

26 On 30 May 2012, the KZD adopted a fresh decision finding that CHEZ RB had discriminated directly against Ms Nikolova on the grounds of her 'personal situation', within the meaning of Article 4(1) and (2) of the ZZD, by placing her, on account of where her business was located, in a disadvantageous position compared with CHEZ RB's other customers whose meters were in accessible locations.

27 CHEZ RB brought an appeal against that decision before the Administrativen sad Sofia-grad (Administrative Court, Sofia).

28 In its order for reference, that court finds, as a preliminary point, that Directive 2000/43 implements the general principle prohibiting discrimination based on race or ethnic origin which is in particular enshrined in Article 21 of the Charter and that the situation at issue in the main proceedings falls within the directive's substantive scope as defined in Article 3(1)(h) thereof. As that court accordingly does not see any reason to doubt that EU law is applicable, it states that it does not refer a question for a preliminary ruling in that regard, while observing that the Court of Justice will, in any event, be called upon to assess this matter before ruling on the questions which it does refer.

29 Then, setting out the reasons prompting it to make a reference to the Court, the Administrativen sad Sofia-grad states, first of all, that, although the KZD referred to discrimination on the grounds of Ms Nikolova's 'personal situation' and Ms Nikolova herself incorrectly referred in her application to

discrimination on the grounds of ‘nationality’, the protected characteristic must, in this instance, be seen in relation to the common Roma ‘ethnic origin’ of most of the inhabitants of the ‘Gizdova mahala’ district.

- 30 In this connection, the referring court, first, takes the view that the Roma community does constitute an ethnic community, one which in Bulgaria indeed has the status of ethnic minority.
- 31 It observes, secondly, that, although statistics relating to the size of the population of Roma origin inhabiting the district concerned are not available, that district is commonly referred to as the largest ‘Roma district’ of the town of Dupnitsa. It is, moreover, common ground between the parties to the dispute that the practice at issue is, more generally, engaged in only in the ‘Roma districts’ of various Bulgarian towns. That is the principal factor determining CHEZ RB’s choice regarding the placing of the electricity meters at an inaccessible height and, even though CHEZ RB does not state expressly that it considers that it is above all persons of Roma origin who make unlawful connections, this is apparent from the context.
- 32 Thirdly, the referring court holds that the KZD was wrong in considering that Ms Nikolova’s Roma origin was not established. In identifying herself, in her application, with the population of Roma origin of the ‘Gizdova mahala’ district, she defined herself as a person of such origin. In any event, that court, which refers in this regard to the judgment in *Feryn* (C-54/07, EU:C:2008:397), considers that in order for discrimination to exist there does not have to be an identifiable complainant contending that he has been the victim of such discrimination. According to the referring court, it also follows from the judgment in *Coleman* (C-303/06, EU:C:2008:415) that application of the principle of equal treatment is not limited solely to persons possessing the protected characteristic.
- 33 The referring court states that the first question submitted by it for a preliminary ruling relates to the foregoing considerations.
- 34 Next, although the referring court is inclined to agree with the KZD’s conclusion that the practice at issue gives rise to direct discrimination, it notes that, in her Opinion delivered in *Belov* (C-394/11, EU:C:2012:585, point 99), Advocate General Kokott concluded that a practice such as the practice at issue amounted *prima facie* to indirect discrimination. It also observes that in similar cases the Varhoven administrativen sad concluded that there was not any direct or indirect discrimination on the grounds of ethnic origin.
- 35 In that context, the national court states that it hesitates over the concepts of ‘direct discrimination’ and ‘indirect discrimination’, referred to in Article 2(2)(a) and Article 2(2)(b) of Directive 2000/43 respectively, and over whether the practice at issue falls within one of those categories.
- 36 Finally, assuming that the practice at issue is covered by Article 2(2)(b) of Directive 2000/43, the referring court doubts that it can be regarded as objectively justified, appropriate and necessary within the meaning of that provision. It points out in particular that, although CHEZ RB contends that the practice at issue is justified on account of a vast number of unlawful connections and of cases of damage and meter tampering, that company withdrew its initial applications before the KZD seeking the production of an expert’s report and the hearing of witnesses, submitting that that conduct is common knowledge. Nor have the parties gathered additional evidence before the referring court, despite the directions addressed to them in respect of the burden of proof. The referring court also observes that articles in the press refer to new methods that are effective and less restrictive for consumers, in particular the use of meters that enable the distributor to perform remote meter-reading and to be informed of attempts at tampering.

37 It is in those circumstances that the Administrativen sad Sofia-grad decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

- (1) Is the expression “ethnic origin” used in [Directive 2000/43] and in the [Charter] to be interpreted as covering a compact group of Bulgarian citizens of Roma origin such as those living in the “Gizdova mahala” district of the town of Dupnitsa?
- (2) Does the expression “comparable situation” within the meaning of Article 2(2)(a) of Directive 2000/43 apply to the circumstances of the present case, in which the commercial measuring instruments are positioned in Roma districts of the town at a height of between six and seven metres whereas in other districts not densely populated by Roma they are generally positioned lower than two metres above ground?
- (3) Is Article 2(2)(a) of Directive 2000/43 to be interpreted so that the positioning of commercial measuring instruments in Roma districts of town at a height of between six and seven metres constitutes less favourable treatment of the population of Roma origin compared to the population of other ethnic origin?
- (4) On the assumption that there has been less favourable treatment, does that treatment, pursuant to the abovementioned provision, result in the circumstances of the main case in whole or in part from the fact that it affects the Roma ethnic group?
- (5) Under Directive 2000/43 is a national provision such as Paragraph 1(7) of the Supplementary Provisions of the [ZZD] — according to which any act, action or omission which directly or indirectly prejudices rights or legitimate interests constitutes “unfavourable treatment” — permissible?
- (6) Is the expression “apparently neutral practice” within the meaning of Article 2(2)(b) of Directive 2000/43 applicable to the practice of [CHEZ RB] of positioning commercial measuring instruments at a height of between six and seven metres? How should the phrase “apparently neutral” be interpreted — as meaning that the practice is obviously neutral or that it only seems neutral at first glance, in other words, that it is ostensibly neutral?
- (7) For a finding that there has been indirect discrimination within the meaning of Article 2(2)(b) of Directive 2000/43, is it necessary that the neutral practice places persons in a particularly less favourable position on the ground of racial or ethnic origin, or is it sufficient that that practice affects only persons of a specific ethnic origin? In that context, under Article 2(2)(b) of Directive 2000/43 is a national provision such as Article 4(3) of the ZZD — according to which there is indirect discrimination where a person is placed in a more unfavourable position because of the characteristics set out in Article 4(1) (including ethnicity) — permissible?
- (8) How should the expression “particular disadvantage” within the meaning of Article 2(2)(b) of Directive 2000/43 be interpreted? Does it correspond to the expression “less favourable treatment” used in Article 2(2)(a) of Directive 2000/43, or does it cover only serious, obvious and particularly significant cases of unequal treatment? Does the practice described in the present case amount to a particular disadvantage? If there has been no serious, obvious and particularly significant case of putting someone in a disadvantageous position, is that sufficient to conclude that there has been no indirect discrimination (without examining whether the practice in question is justified, appropriate and necessary in view of attaining a legitimate aim)?

- (9) Are national provisions such as Article 4(2) and (3) of the ZZD — which for direct discrimination require “less favourable treatment” and for indirect discrimination require “placing in a less favourable position” but which do not, unlike the directive, make a distinction according to the degree of seriousness of the unfavourable treatment concerned — permissible under Article 2(2)(a) and (b) of Directive 2000/43?
- (10) Is Article 2(2)(b) of Directive 2000/43 to be interpreted as meaning that the practice of [CHEZ RB] in question is objectively justified from the point of view of ensuring the security of the electricity transmission network and the due recording of electricity consumption? Is this practice also appropriate in the light of the defendant’s obligation to ensure that consumers have free access to the electricity meter readings? Is that practice necessary when, according to media publications, there are other technically and financially feasible means of securing the commercial measuring instruments?

Consideration of the questions referred

Preliminary observations

- 38 As is apparent from paragraph 28 of the present judgment, although the referring court states that the situation at issue in the main proceedings appears to it to fall within the substantive scope of Directive 2000/43 as defined in Article 3(1)(h), so that it does not consider it necessary to refer a question to the Court for a preliminary ruling in that regard, it nevertheless notes that this aspect constitutes a matter which the Court will be obliged to assess before examining the questions which it does refer to the Court.
- 39 Whilst the Bulgarian Government and the European Commission take the view that the practice at issue falls within the substantive scope of Directive 2000/43 as so defined, CHEZ RB maintains on the other hand that that is not the case. In its submission, the statement in Article 3(1) that the directive is to apply ‘[w]ithin the limits of the powers conferred upon the [European Union]’ means that the directive is applicable only in relation to situations falling within the scope of EU law and this requires a substantive rule of EU law to be applicable to the facts at issue. According to CHEZ RB, the European Union has not laid down any rule relating to the location of electricity meters or visual access to them.
- 40 It is apparent from recital 12 in the preamble to Directive 2000/43 that the EU legislature considered that, in order to ensure the development of democratic and tolerant societies which allow the participation of all persons irrespective of racial or ethnic origin, specific action in the field of discrimination based on racial or ethnic origin should in particular cover areas such as those listed in Article 3(1) of that directive (see judgment in *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraph 41).
- 41 Article 3(1)(h) of Directive 2000/43 makes general reference to access to and supply of goods and services which are available to the public (see judgment in *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraph 45).
- 42 As the Court has already held, in the light of the objective of Directive 2000/43 and the nature of the rights which it seeks to safeguard, and in view of the fact that that directive is merely an expression, within the area under consideration, of the principle of equality, which is one of the general principles of EU law, as recognised in Article 21 of the Charter, the scope of that directive cannot be defined restrictively (judgment in *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraph 43).

- 43 That being so, and since there is no doubt, as the Advocate General has stated in points 38 and 39 of her Opinion, that the supply of electricity is covered by Article 3(1)(h) of Directive 2000/43, that provision must be interpreted as meaning that the installation at the final consumer's property of an electricity meter, which constitutes an adjunct inextricably linked to that supply, falls within the scope of the directive and is subject to observance of the principle of equal treatment which the directive lays down.
- 44 As regards the reference in Article 3(1) of Directive 2000/43 to the 'limits of the powers conferred upon the [European Union]', it need merely be observed in this instance that provisions such as Article 13(1) of Directive 2006/32, or Article 3(3) and (7) of Directive 2009/72 read in conjunction with paragraph 1(h) and (i) of Annex I thereto, concern the making available to final consumers of individual electricity meters intended, within the framework of the universal service, to enable them to measure, monitor and regulate their energy consumption. It is therefore not in doubt that the circumstances in which such meters are made available fall within the scope of the powers of the European Union, in particular under Article 95 EC, now Article 114 TFEU, or under Article 175 EC, now Article 191 TFEU, which were provisions constituting the legal basis for those directives.

Question 1

- 45 According to its wording, the first question relates to 'ethnic origin' within the meaning of Directive 2000/43 and of Article 21 of the Charter and is designed to ascertain whether that concept must be interpreted as 'covering a compact group of Bulgarian citizens of Roma origin', such as those living in the district at issue in the main proceedings.
- 46 In the light of the detailed reasoning that the order for reference contains in this regard, as summarised in paragraphs 29 to 33 of the present judgment, it is apparent that the referring court's doubts do not relate to whether Roma origin may be classified as 'ethnic origin' within the meaning of Directive 2000/43 and, more generally, of EU law, a matter which that court, correctly, tends to consider to be established. Indeed, the concept of ethnicity, which has its origin in the idea of societal groups marked in particular by common nationality, religious faith, language, cultural and traditional origins and backgrounds, applies to the Roma community (see, to this effect, in relation to Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, judgments of the European Court of Human Rights in *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, ECHR 2005-VII, and *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, §§ 43 to 45 and 50, ECHR 2009).
- 47 On the other hand, as is apparent from paragraphs 31 and 32 of the present judgment, the decisive factor that appears to have prompted the referring court to ask its first question is that the practice at issue is carried out in the whole of a district lived in mainly, but not exclusively, by persons of Roma origin.
- 48 In that latter regard, the referring court considers that, because Ms Nikolova, by her application, assimilated herself to the population of Roma origin inhabiting the district concerned, alongside which she suffers the disadvantages stemming from the practice at issue, she may be regarded as having defined herself as being of Roma origin. That court also states, however, that if Ms Nikolova had to be considered not to be of Roma origin, that would not be capable of affecting either the applicability of Directive 2000/43 in the case in point or the fact that she is in this instance justified in pleading a failure to comply with the directive in her regard.
- 49 In her observations submitted to the Court, account of which should be taken, Ms Nikolova explicitly stated that she is of Bulgarian ethnic origin, does not define herself as being of Roma origin and is not to be regarded as such.

- 50 In the light of all the foregoing, it must be considered that, by its first question, the referring court asks, in essence, whether the concept of ‘discrimination on the grounds of ethnic origin’, for the purpose of Directive 2000/43 and, in particular, of Articles 1 and 2(1) thereof, read, as the case may be, in conjunction with Article 21 of the Charter, must be interpreted as being intended to apply in circumstances such as those at issue in the main proceedings irrespective of whether the measure at issue in those proceedings affects persons who have a certain ethnic origin or persons who, without possessing that origin, suffer, together with the former, the less favourable treatment or particular disadvantage resulting from that measure.
- 51 As regards the terms in which the provisions of Directive 2000/43 are couched, Article 1 states that the directive’s purpose is to lay down a framework for combating ‘discrimination on the grounds of racial or ethnic origin’.
- 52 Article 2(1) of Directive 2000/43 defines the principle of equal treatment as meaning that there is to be no ‘direct or indirect discrimination based on racial or ethnic origin’.
- 53 As the Advocate General has observed in point 53 of her Opinion, Article 2(2)(a) of Directive 2000/43 provides in most of its language versions that direct discrimination is to be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation ‘on grounds of racial or ethnic origin’, only a few language versions of that provision referring to less favourable treatment suffered by a person because of ‘his’ racial or ethnic origin.
- 54 Under Article 2(2)(b) of Directive 2000/43, indirect discrimination is to be taken to occur ‘where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary’.
- 55 As, in the light in particular of the divergence between the language versions of Directive 2000/43 that is mentioned in paragraph 53 of the present judgment, the wording of the abovementioned provisions does not in itself settle the question whether the principle of equal treatment which that directive is designed to guarantee is to benefit only those among the class of persons affected by a discriminatory measure based on racial or ethnic origin who actually possess the racial or ethnic origin concerned, it is necessary, for the purpose of interpreting those provisions, to have regard also to their context and to the general scheme and the aim of Directive 2000/43 of which they form part (see to this effect, *inter alia*, judgments in *VEMW and Others*, C-17/03, EU:C:2005:362, paragraph 41 and the case-law cited, and *Commission v Portugal*, C-450/11, EU:C:2013:611, paragraph 47 and the case-law cited).
- 56 In that regard, the Court’s case-law, already recalled in paragraph 42 of the present judgment, under which the scope of Directive 2000/43 cannot, in the light of its objective and the nature of the rights which it seeks to safeguard, be defined restrictively, is, in this instance, such as to justify the interpretation that the principle of equal treatment to which that directive refers applies not to a particular category of person but by reference to the grounds mentioned in Article 1 thereof, so that that principle is intended to benefit also persons who, although not themselves a member of the race or ethnic group concerned, nevertheless suffer less favourable treatment or a particular disadvantage on one of those grounds (see, by analogy, judgment in *Coleman*, C-303/06, EU:C:2008:415, paragraphs 38 and 50).
- 57 Such an interpretation is, moreover, supported by recital 16 in the preamble to, and Article 3(1) of, Directive 2000/43, according to which the protection against discrimination on grounds of racial or ethnic origin which the directive is designed to guarantee is to benefit ‘all’ persons.

- 58 It is also supported both by the wording of Article 13 EC, now, after amendment, Article 19 TFEU, a provision which constitutes the legal basis of Directive 2000/43 and which confers on the European Union the competence to take appropriate action to combat discrimination based, inter alia, on racial and ethnic origin (see, by analogy, judgment in *Coleman*, C-303/06, EU:C:2008:415, paragraph 38), and, as the Advocate General has observed in point 53 of her Opinion, by the principle of non-discrimination on grounds of race and ethnic origin enshrined in Article 21 of the Charter, to which the directive gives specific expression in the substantive fields that it covers (see judgment in *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraph 43, and, by analogy, judgment in *Felber*, C-529/13, EU:C:2015:20, paragraphs 15 and 16).
- 59 As regards the situation at issue in the main proceedings, while accepting that, as Ms Nikolova asserts before the Court, she is not of Roma origin, the fact remains that it is indeed Roma origin, in this instance that of most of the other inhabitants of the district in which she carries on her business, which constitutes the factor on the basis of which she considers that she has suffered less favourable treatment or a particular disadvantage.
- 60 In the light of all of the foregoing, the answer to the first question is that the concept of ‘discrimination on the grounds of ethnic origin’, for the purpose of Directive 2000/43 and, in particular, of Articles 1 and 2(1) thereof, must be interpreted as being intended to apply in circumstances such as those at issue before the referring court — in which, in an urban district mainly lived in by inhabitants of Roma origin, all the electricity meters are placed on pylons forming part of the overhead electricity supply network at a height of between six and seven metres, whereas such meters are placed at a height of less than two metres in the other districts — irrespective of whether that collective measure affects persons who have a certain ethnic origin or those who, without possessing that origin, suffer, together with the former, the less favourable treatment or particular disadvantage resulting from that measure.

Question 5

- 61 According to the terms of the fifth question, which it is appropriate to examine secondly, the referring court asks whether Paragraph 1(7) of the Supplementary Provisions of the ZZD, which defines ‘unfavourable treatment’ as any act which directly or indirectly prejudices ‘rights or legitimate interests’, is permissible under Directive 2000/43.
- 62 It should be recalled that, in proceedings brought on the basis of Article 267 TFEU, the Court has no jurisdiction to rule on the compatibility of national rules with EU law. On the other hand, the Court does have jurisdiction to provide the national court with all the guidance as to the interpretation of EU law necessary to enable that court to rule on the compatibility of national rules with EU law (see, inter alia, judgment in *Placanica and Others*, C-338/04, C-359/04 and C-360/04, EU:C:2007:133, paragraph 36 and the case-law cited).
- 63 In addition, it should be noted that it is apparent from the explanations provided by the referring court that that concept of ‘unfavourable treatment’ applies under national law for the purpose of establishing the presence of both direct and indirect discrimination as referred to in Article 4(2) and (3) of the ZZD respectively.
- 64 In the light of the foregoing, the fifth question must be understood as being designed to ascertain whether Directive 2000/43, in particular Article 2(1) and (2)(a) and (b) thereof, must be interpreted as precluding a national provision which lays down that, in order to be able to conclude that there is direct discrimination or indirect discrimination on the grounds of racial or ethnic origin in the areas covered by Article 3(1) of the directive, the less favourable treatment or the particular disadvantage, to which Article 2(2)(a) and (b) respectively refer, must consist in prejudice to rights or legitimate interests.

- 65 First of all, as is apparent from recitals 12 and 13 in its preamble, Directive 2000/43 is intended to ensure the development of democratic and tolerant societies which allow the participation of all persons irrespective of racial or ethnic origin, and it is to this end that ‘any’ direct or indirect discrimination based on racial or ethnic origin as regards the areas covered by the directive should be prohibited throughout the European Union. Article 2(1) of the directive also confirms that the principle of equal treatment for the purpose of the directive means that there is to be ‘no’ direct or indirect discrimination based on racial or ethnic origin.
- 66 Secondly, as has been recalled in paragraph 42 of the present judgment, the scope of Directive 2000/43 cannot be defined restrictively.
- 67 Finally, according to recital 28 in its preamble, the objective of Directive 2000/43 is to ensure a common high level of protection against discrimination in the Member States. It is clear, in this regard, from Article 6(1) that the directive lays down ‘minimum requirements’, without prejudice to the ability of the Member States to introduce or maintain provisions which are ‘more favourable’ to the protection of the principle of equal treatment.
- 68 It must be held that a national provision, such as that at issue in the main proceedings, which classifies only acts that prejudice a ‘right’ or a ‘legitimate interest’ of a person as ‘less favourabl[e]’ treatment or a ‘particular disadvantage’ within the meaning of Article 2(2)(a) and (b) of Directive 2000/43 lays down a condition which does not stem from those provisions of the directive and which, therefore, results in the scope of the protection guaranteed by the directive being restricted.
- 69 In the light of the foregoing considerations, the answer to the fifth question is that Directive 2000/43, in particular Article 2(1) and (2)(a) and (b) thereof, must be interpreted as precluding a national provision which lays down that, in order to be able to conclude that there is direct or indirect discrimination on the grounds of racial or ethnic origin in the areas covered by Article 3(1) of the directive, the less favourable treatment or the particular disadvantage to which Article 2(2)(a) and (b) respectively refer must consist in prejudice to rights or legitimate interests.

Questions 2 to 4

- 70 By its second, third and fourth questions, which it is appropriate to consider together thirdly, the referring court seeks, in essence, to ascertain whether Article 2(2)(a) of Directive 2000/43 must be interpreted as meaning that a measure such as the practice at issue is liable to create a situation in which persons are, for the purpose of that provision, the subject of ‘less favourable treatment’ than other persons ‘in a comparable situation’ on grounds relating in whole or in part to ethnic origin, so that that practice would give rise to direct discrimination based on such origin for the purpose of that provision.
- 71 It must be borne in mind that Article 267 TFEU does not empower the Court to apply rules of EU law to a particular case, but only to rule on the interpretation of the Treaties and of acts adopted by the EU institutions. The Court may, however, in the framework of the judicial cooperation provided for by that article and on the basis of the material presented to it, provide the national court with an interpretation of EU law which may be useful to it in assessing the effects of one or other of its provisions (see, *inter alia*, judgment in *Feryn*, C-54/07, EU:C:2008:397, paragraph 19 and the case-law cited).
- 72 In the case in point, it should, first, be noted that, as has already been observed in paragraph 58 of the present judgment, Directive 2000/43 gives specific expression, in its field of application, to the principle of non-discrimination on grounds of race and ethnic origin which is enshrined in Article 21 of the Charter.

- 73 Secondly, recital 3 in the preamble to Directive 2000/43 refers to various international agreements, including the International Convention on the Elimination of all Forms of Racial Discrimination, adopted on 21 December 1965. Under Article 1 of that convention, discrimination based on a person's ethnic origin constitutes a form of racial discrimination.
- 74 Thirdly, as is apparent from recitals 9, 12 and 13 in the preamble to Directive 2000/43, the EU legislature also sought to make clear (i) that discrimination based on racial or ethnic origin may undermine the achievement of the objectives of the Treaty, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity, and may also undermine the objective of developing the European Union as an area of freedom, security and justice and (ii) that the prohibition of any discrimination of that type which the directive imposes as regards the areas covered by it is intended, in particular, to ensure the development of democratic and tolerant societies which allow the participation of all persons irrespective of racial or ethnic origin.
- 75 With the benefit of those preliminary considerations, as regards, in the first place, the issue — forming the subject of the fourth question referred for a preliminary ruling — whether the difference in treatment resulting from the practice at issue can be held to have been introduced on grounds of ethnic origin within the meaning of Article 2(2)(a) of Directive 2000/43, it is necessary to begin by pointing out that the mere fact that the district at issue in the main proceedings is also lived in by inhabitants who are not of Roma origin does not rule out that such a practice was imposed in view of the Roma ethnic origin shared by most of that district's inhabitants.
- 76 It should be stated next, having regard to the reference in the fourth question to less favourable treatment which could result 'in whole or in part' from the fact that it affects the Roma ethnic group, that it is sufficient, in order for there to be direct discrimination within the meaning of Article 2(2)(a) of Directive 2000/43, that that ethnic origin determined the decision to impose the treatment, without prejudice to the exceptions, provided for in Articles 4 and 5 of the directive, relating to genuine and determining occupational requirements and to positive action by the Member States to prevent or compensate for disadvantages linked to racial or ethnic origin, exceptions which are not relevant in the present case.
- 77 Finally, under Article 8(1) of Directive 2000/43, when persons who consider themselves wronged because the principle of equal treatment has not been applied establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of that principle.
- 78 The Court has pointed out that, although it is the person who considers himself to have been wronged because the principle of equal treatment has not been applied who must initially establish facts from which it may be presumed that there has been direct or indirect discrimination, in the context of establishing such facts it must be ensured that a refusal of disclosure by the respondent is not liable to compromise the achievement of the objectives pursued by Directive 2000/43 (judgment in *Meister*, C-415/10, EU:C:2012:217, paragraphs 36 and 40).
- 79 It is for national judicial or other competent bodies to assess, in accordance with rules of national law and/or national practice, the facts from which it may be presumed that there has been direct or indirect discrimination, as recital 15 in the preamble to Directive 2000/43 states (judgment in *Meister*, C-415/10, EU:C:2012:217, paragraph 37).
- 80 It is therefore, in the present instance, for the referring court to take account of all the circumstances surrounding the practice at issue, in order to determine whether there is sufficient evidence for a finding that the facts from which it may be presumed that there has been direct discrimination on grounds of ethnic origin have been established, and to ensure that a refusal of disclosure by the

respondent, here CHEZ RB, in the context of establishing such facts is not liable to compromise the achievement of the objectives pursued by Directive 2000/43 (see, to this effect, judgment in *Meister*, C-415/10, EU:C:2012:217, paragraph 42).

- 81 The matters which may be taken into consideration in this connection include, in particular, the fact, noted by the referring court, that it is common ground and not disputed by CHEZ RB that the latter has established the practice at issue only in urban districts which, like the ‘Gizdova mahala’ district, are known to have Bulgarian nationals of Roma origin as the majority of their population.
- 82 The same applies to the fact relied on by the KZD in its observations submitted to the Court that, in various cases that were brought before the KZD, CHEZ RB asserted that in its view the damage and unlawful connections are perpetrated mainly by Bulgarian nationals of Roma origin. Such assertions could in fact suggest that the practice at issue is based on ethnic stereotypes or prejudices, the racial grounds thus combining with other grounds.
- 83 Matters that may also be taken into consideration include the fact, mentioned by the referring court, that, notwithstanding requests to this effect from the referring court in respect of the burden of proof, CHEZ RB failed to adduce evidence of the alleged damage, meter tampering and unlawful connections, asserting that they are common knowledge.
- 84 The referring court must likewise take account of the compulsory, widespread and lasting nature of the practice at issue which, because, first, it has thus been extended without distinction to all the district’s inhabitants irrespective of whether their individual meters have been tampered with or given rise to unlawful connections and of the identity of the perpetrators of that conduct and, secondly, it still endures nearly a quarter of a century after it was introduced, is such as to suggest that the inhabitants of that district, which is known to be lived in mainly by Bulgarian nationals of Roma origin, are, as a whole, considered to be potential perpetrators of such unlawful conduct. Such a perception may also be relevant for the overall assessment of the practice at issue (see, by analogy, judgment in *Asociația Accept*, C-81/12, EU:C:2013:275, paragraph 51).
- 85 Furthermore, it should be recalled that, if the referring court were to conclude that there is a presumption of discrimination, the effective application of the principle of equal treatment would require that the burden of proof then falls on the respondents concerned, who must prove that there has been no breach of that principle (see, in particular, judgments in *Coleman*, C-303/06, EU:C:2008:415, paragraph 54, and *Asociația Accept*, C-81/12, EU:C:2013:275, paragraph 55). In such circumstances, CHEZ RB, as respondent, would have the task of rebutting the existence of such a breach of the principle of equal treatment by proving that the establishment of the practice at issue and its current retention are not in any way founded on the fact that the districts concerned are districts inhabited mainly by Bulgarian nationals of Roma origin, but exclusively on objective factors unrelated to any discrimination on the grounds of racial or ethnic origin (see, by analogy, judgments in *Coleman*, C-303/06, EU:C:2008:415, paragraph 55, and *Asociația Accept*, C-81/12, EU:C:2013:275, paragraph 56).
- 86 In the second place, as regards the other conditions laid down by Article 2(2)(a) of Directive 2000/43, which form the subject of the second and third questions, that is to say, respectively, that there must be ‘less favourable treatment’ and that the situations examined must be ‘comparable’, there is no doubt that a practice such as the practice at issue displays such characteristics.
- 87 First, it cannot be denied that the treatment resulting from that practice is unfavourable for the inhabitants — for the most part of Roma origin — of the urban district concerned, having regard both to the fact that it is extremely difficult, or even impossible, for them to check their electricity meters for the purpose of monitoring their consumption and to that practice’s offensive and stigmatising nature already noted in paragraph 84 of the present judgment.

- 88 Second, as regards whether the condition relating to the existence of a ‘comparable situation’ within the meaning of Article 2(2)(a) of Directive 2000/43 is capable of being met in the main proceedings, it is apparent from the order for reference that the doubts which the referring court entertains in this regard are due to the fact that (i) the persons not of Roma origin who inhabit ‘Roma districts’ are also affected by the practice at issue and (ii), conversely, persons of Roma origin who inhabit districts where the majority of the inhabitants are not of such origin escape that practice.
- 89 It should be recalled that the requirement relating to the comparability of the situations for the purpose of determining whether there is a breach of the principle of equal treatment must be assessed in the light of all the elements which characterise them (see, in particular, judgment in *Arcelor Atlantique et Lorraine and Others*, C-127/07, EU:C:2008:728, paragraph 25).
- 90 In the case in point, it must be held that, in principle, all final consumers of electricity who are supplied by the same distributor within an urban area must, irrespective of the district in which they reside, be regarded as being, in relation to that distributor, in a comparable situation so far as concerns the making available of an electricity meter intended to measure their consumption and to enable them to monitor changes in their consumption.
- 91 In the light of all the foregoing, the answer to the second, third and fourth questions is that Article 2(2)(a) of Directive 2000/43 must be interpreted as meaning that a measure such as the practice at issue constitutes direct discrimination within the meaning of that provision if that measure proves to have been introduced and/or maintained for reasons relating to the ethnic origin common to most of the inhabitants of the district concerned, a matter which is for the referring court to determine by taking account of all the relevant circumstances of the case and of the rules relating to the reversal of the burden of proof that are envisaged in Article 8(1) of the directive.

Questions 6 to 9

- 92 By its sixth, seventh, eighth and ninth questions, which it is appropriate to deal with together fourthly, the referring court raises, in essence, the issue of the meaning of the terms ‘apparently neutral practice’ and ‘put persons of a racial or ethnic origin at a particular disadvantage compared with other persons’, as referred to in Article 2(2)(b) of Directive 2000/43, and the issue of whether, assuming that it does not amount to direct discrimination, a practice such as the practice at issue thus satisfies those conditions and whether it consequently is liable to constitute indirect discrimination within the meaning of that provision. The referring court also questions whether that provision must be interpreted as precluding a national provision according to which, in order for there to be such indirect discrimination, the particular disadvantage must have been brought about for reasons of racial or ethnic origin.
- 93 As regards, in the first place, the existence of an ‘apparently neutral practice’ within the meaning of Article 2(2)(b) of Directive 2000/43 and the issue of whether that concept must be understood, as the referring court asks in its sixth question, as designating a practice whose neutrality is particularly ‘obvious’ or a practice that is neutral ‘ostensibly’ or ‘at first glance’, there is no doubt, as the Advocate General has stated in point 92 of her Opinion, that that concept must be understood in this second sense.
- 94 In addition to the fact that it corresponds to the most natural meaning of the term used, that sense is required in the light of the Court’s settled case-law relating to the concept of indirect discrimination, according to which, unlike direct discrimination, indirect discrimination may stem from a measure which, albeit formulated in neutral terms, that is to say, by reference to other criteria not related to the protected characteristic, leads, however, to the result that particularly persons possessing that characteristic are put at a disadvantage (see to this effect, in particular, judgment in *Z.*, C-363/12, EU:C:2014:159, paragraph 53 and the case-law cited).

- 95 In the second place, as regards the doubts expressed by the referring court — in its seventh question — in relation to Article 4(3) of the ZZD, according to which indirect discrimination is to be taken to occur where, on account of race or ethnic origin, one person is placed in a less favourable position compared with other persons, it should be recalled that, as is clear from the answer given to the second, third and fourth questions, if it is apparent that a measure which gives rise to a difference in treatment has been introduced for reasons relating to racial or ethnic origin, that measure must be classified as ‘direct discrimination’ within the meaning of Article 2(2)(a) of Directive 2000/43.
- 96 By contrast, indirect discrimination on the grounds of racial or ethnic origin does not require the measure at issue to be based on reasons of that type. As is apparent from the case-law recalled in paragraph 94 of the present judgment, in order for a measure to be capable of falling within Article 2(2)(b) of Directive 2000/43, it is sufficient that, although using neutral criteria not based on the protected characteristic, it has the effect of placing particularly persons possessing that characteristic at a disadvantage.
- 97 It follows from the foregoing that Article 2(2)(b) of Directive 2000/43 must be interpreted as precluding a national provision under which, in order for there to be indirect discrimination on the grounds of racial or ethnic origin, the measure in question is required to have been adopted for reasons of racial or ethnic origin.
- 98 In the third place, as regards the reference in Article 2(2)(b) of Directive 2000/43 to the existence of a ‘particular disadvantage’ for persons of a given racial or ethnic origin compared with other persons, the referring court notes in its eighth question that Article 2(2)(a) of the directive defines direct discrimination by reference to the existence of ‘less favourable treatment’. In the light of that terminological distinction, the referring court wonders whether only a ‘serious, obvious and particularly significant case’ is capable of resulting in a ‘particular’ disadvantage within the meaning of Article 2(2)(b) of the directive.
- 99 It follows neither from the words ‘particular disadvantage’ used in Article 2(2)(b) nor from the other detail contained in that provision that such a disadvantage would exist only where there is a serious, obvious and particularly significant case of inequality.
- 100 That condition must, on the other hand, be understood as meaning that it is particularly persons of a given ethnic origin who are at a disadvantage because of the measure at issue.
- 101 First, such an interpretation is consistent with the Court’s case-law relating to the concept of indirect discrimination, according to which, in particular, such discrimination is liable to arise when a national measure, albeit formulated in neutral terms, works to the disadvantage of far more persons possessing the protected characteristic than persons not possessing it (see in particular, to this effect, judgments in *Z.*, C-363/12, EU:C:2014:159, paragraph 53 and the case-law cited, and *Cachaldora Fernández*, C-527/13, EU:C:2015:215, paragraph 28 and the case-law cited).
- 102 Second, that interpretation is, unlike the interpretation which would mean that only serious, obvious and particularly significant cases of inequality fall within Article 2(2)(b) of Directive 2000/43, the one that is most consistent with the objectives pursued by the EU legislature recalled in paragraphs 42, 67 and 72 to 74 of the present judgment.
- 103 In the fourth place, as regards the referring court’s ninth question, concerning whether Article 4(2) and (3) of the ZZD, which refers to treatment or a position that is ‘less favourable’ in order to define both direct discrimination and indirect discrimination and thus to the same degree of seriousness, complies with Directive 2000/43, it need only be pointed out that it is apparent from the interpretation adopted in paragraphs 99 to 102 of the present judgment relating to Article 2(2)(b) of the directive that no particular degree of seriousness is required so far as concerns the particular

disadvantage referred to in that provision. Accordingly, the fact that recourse is not had to such a criterion of seriousness in the abovementioned national legislation cannot give rise to a problem of compliance with the directive.

- 104 In the fifth place, as regards the queries contained in the sixth and eighth questions relating to whether a practice such as the practice at issue is ‘apparently’ neutral and whether it causes a ‘particular disadvantage’, within the meaning of Article 2(2)(b) of Directive 2000/43 as explained above, it should be recalled, as has already been done in paragraph 71 of the present judgment, that, although it is for the referring court to assess the facts and apply rules of EU law to a particular case, the Court may be prompted to provide the referring court with an interpretation of EU law which may be useful to it in assessing the effects of one or other of its provisions.
- 105 In this instance, assuming that the referring court comes to the conclusion that it is not established that the practice at issue amounts to direct discrimination on the grounds of ethnic origin, it must be stated that the facts as found by that court permit the view to be taken that such a practice displays the characteristics required to constitute indirect discrimination within the meaning of Article 2(2)(b) of Directive 2000/43 unless it can be justified in accordance with that provision.
- 106 First, it is not in doubt that that practice and the criterion in accordance with which it is thus said to have been exclusively carried out, namely the location of the dwellings concerned in a district where numerous instances of tampering with, and damage to, electricity meters, as well as unlawful connections, have been recorded, would constitute, in principle, a practice and a criterion that are apparently neutral within the meaning of Article 2(2)(b) of Directive 2000/43 as explained in paragraphs 93 and 94 of the present judgment.
- 107 Second, since it is common ground, in the light of what is stated in the order for reference, that that practice developed only in urban districts which, like the district at issue in the main proceedings, are inhabited mainly by persons of Roma origin, such a practice is liable to affect persons possessing such an ethnic origin in considerably greater proportions and accordingly to put them at a particular disadvantage compared with other persons, within the meaning of Article 2(2)(b) of Directive 2000/43 as explained in paragraphs 100 to 102 of the present judgment.
- 108 As has already been pointed out in paragraph 87 of the present judgment, such a disadvantage is due, in particular, to the offensive and stigmatising nature of the practice at issue and to the fact that the latter makes it extremely difficult, if not impossible, for final consumers to check their electricity meters for the purpose of monitoring their consumption.
- 109 In the light of all the foregoing, the answer to the sixth, seventh, eighth and ninth questions is that Article 2(2)(b) of Directive 2000/43 must be interpreted as meaning that:
- that provision precludes a national provision according to which, in order for there to be indirect discrimination on the grounds of racial or ethnic origin, the particular disadvantage must have been brought about for reasons of racial or ethnic origin;
 - the concept of an ‘apparently neutral’ provision, criterion or practice as referred to in that provision means a provision, criterion or practice which is worded or applied, ostensibly, in a neutral manner, that is to say, having regard to factors different from and not equivalent to the protected characteristic;
 - the concept of ‘particular disadvantage’ within the meaning of that provision does not refer to serious, obvious or particularly significant cases of inequality, but denotes that it is particularly persons of a given racial or ethnic origin who are at a disadvantage because of the provision, criterion or practice at issue;

- assuming that a practice, such as that at issue in the main proceedings, does not amount to direct discrimination within the meaning of Article 2(2)(a) of the directive, such a practice is then, in principle, liable to constitute an apparently neutral practice putting persons of a given ethnic origin at a particular disadvantage compared with other persons, within the meaning of Article 2(2)(b).

Question 10

- 110 By its tenth question, the referring court seeks, in essence, to ascertain whether Article 2(2)(b) of Directive 2000/43 must be interpreted as meaning that a practice such as that at issue in the main proceedings can be objectively justified by the concern to ensure the security of the electricity transmission network and the due recording of electricity consumption, having regard, inter alia, to the need to ensure that final users have free access to their electricity meters, and when, in particular, the media have given coverage to the existence of other — both technically and financially feasible — means enabling the security of the electricity meters to be ensured.
- 111 As is clear from Article 2(2)(b), a provision, criterion or practice which is apparently neutral but would put persons of a given racial or ethnic origin at a particular disadvantage amounts to indirect discrimination, and is therefore prohibited, unless it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
- 112 In the light of the considerations and objectives noted in paragraphs 72 to 74 of the present judgment, where there is a difference in treatment on the grounds of racial or ethnic origin, the concept of objective justification must be interpreted strictly.
- 113 In the present instance, as is clear from the order for reference and the observations submitted by CHEZ RB to the Court, that company contends that the practice at issue was established in order to combat the numerous instances of damage to electricity meters, the tampering with them and the unlawful connections which were recorded in the district concerned. That practice is thus said to be designed both to prevent fraud and abuse and to protect individuals against the risks to their life and health to which such conduct gives rise, as well as to ensure the quality and security of electricity distribution in the interest of all users.
- 114 In the first place, it must be accepted, as the Advocate General has also observed in point 117 of her Opinion, that, viewed as a whole, such aims constitute legitimate aims recognised by EU law (see, in respect of the combating of fraud and criminality, judgment in *Placanica and Others*, C-338/04, C-359/04 and C-360/04, EU:C:2007:133, paragraphs 46 and 55).
- 115 In the second place, it is to be noted that the measures examined must, as provided in Article 2(2)(b) of Directive 2000/43, be ‘objectively’ justified by such aims.
- 116 In circumstances such as those at issue in the main proceedings, and since CHEZ RB relies, for the purpose of justifying the practice at issue, on the numerous instances of damage and numerous unlawful connections to electricity meters that are said to have occurred in the past in the district concerned and on the risk of such conduct continuing in the future, as the Advocate General has observed in point 115 of her Opinion that company has the task at the very least of establishing objectively, first, the actual existence and extent of that unlawful conduct and, second, in the light of the fact that some 25 years have since elapsed, the precise reasons for which there is, as matters currently stand, a major risk in the district concerned that such damage and unlawful connections to meters will continue.

- 117 In order to discharge the burden of proof borne by it in this regard, CHEZ RB cannot merely contend that such conduct and risks are ‘common knowledge’, as it seems to have done before the referring court.
- 118 In the third place, if CHEZ RB is able to establish that the practice at issue objectively pursues the legitimate aims relied upon by it, it will also be necessary to establish, as Article 2(2)(b) of Directive 2000/43 requires, that that practice constitutes an appropriate and necessary means for the purpose of achieving those aims.
- 119 As the Advocate General has observed in points 121 to 124 of her Opinion, it seems, a priori and without prejudice to the definitive factual assessments on the issue which are a matter for the referring court, that a practice such as the practice at issue is capable of enabling the unlawful conduct claimed to be targeted in this instance to be combated effectively, so that the condition relating to the appropriateness of such a practice for the purpose of pursuing the legitimate aims invoked appears to be satisfied.
- 120 As to the condition relating to the necessity of the practice at issue for the same purpose, the referring court will have the task, in particular, of determining whether the urban districts, such as that at issue in the main proceedings, in which CHEZ RB has recourse to the practice at issue display particular features of such a kind that other appropriate and less restrictive measures would not enable the problems encountered to be resolved.
- 121 In this connection, the KZD submitted in its observations that other electricity distribution companies have given up the practice at issue, giving preference to other techniques for the purpose of combating damage and tampering, and have restored the electricity meters in the districts concerned to a normal height.
- 122 It is for the referring court to determine whether other appropriate and less restrictive measures thus exist for the purpose of achieving the aims invoked by CHEZ RB and, if that is so, to hold that the practice at issue cannot be regarded as necessary within the meaning of Article 2(2)(b) of Directive 2000/43.
- 123 Furthermore, assuming that no other measure as effective as the practice at issue can be identified, the referring court will also have to determine whether the disadvantages caused by the practice at issue are disproportionate to the aims pursued and whether that practice unduly prejudices the legitimate interests of the persons inhabiting the district concerned (see to this effect, in particular, judgments in *Ingeniørforeningen i Danmark*, C-499/08, EU:C:2010:600, paragraphs 32 and 47, and *Nelson and Others*, C-581/10 and C-629/10, EU:C:2012:657, paragraph 76 et seq.).
- 124 The referring court will, first, have to pay regard to the legitimate interest of the final consumers of electricity in having access to the supply of electricity in conditions which do not have an offensive or stigmatising effect.
- 125 It will also be incumbent upon it to take into consideration the binding, widespread and long-standing nature of the practice at issue which, as is common ground, and as has already been pointed out in paragraph 84 of the present judgment, is imposed without distinction and lastingly on all the inhabitants of the district concerned notwithstanding the fact — which is for the referring court to verify — that no individual unlawful conduct is attributable to most of them and they cannot be held accountable for such acts caused by third parties either.

- 126 In its assessment, the referring court will, finally, have to take account of the legitimate interest of the final consumers inhabiting the district concerned in being able to check and monitor their electricity consumption effectively and regularly, an interest and monitoring which, as has already been pointed out in paragraph 44 of the present judgment, have been expressly recognised and encouraged by the EU legislature.
- 127 Although it seems that it necessarily follows from the taking into account of all the foregoing criteria that the practice at issue cannot be justified within the meaning of Article 2(2)(b) of Directive 2000/43 since the disadvantages caused by the practice appear disproportionate to the objectives pursued, in the context of proceedings concerning a preliminary reference made on the basis of Article 267 TFEU it is for the referring court to carry out the final assessments which are necessary in that regard.
- 128 In the light of all the foregoing, the answer to the tenth question is that Article 2(2)(b) of Directive 2000/43 must be interpreted as meaning that a practice such as that at issue in the main proceedings would be capable of being objectively justified by the intention to ensure the security of the electricity transmission network and the due recording of electricity consumption only if that practice did not go beyond what is appropriate and necessary to achieve those legitimate aims and the disadvantages caused were not disproportionate to the objectives thereby pursued. That is not so if it is found, a matter which is for the referring court to determine, either that other appropriate and less restrictive means enabling those aims to be achieved exist or, in the absence of such other means, that that practice prejudices excessively the legitimate interest of the final consumers of electricity inhabiting the district concerned, mainly lived in by inhabitants of Roma origin, in having access to the supply of electricity in conditions which are not of an offensive or stigmatising nature and which enable them to monitor their electricity consumption regularly.

Costs

- 129 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Grand Chamber) hereby rules:

1. **The concept of ‘discrimination on the grounds of ethnic origin’, for the purpose of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and, in particular, of Articles 1 and 2(1) thereof, must be interpreted as being intended to apply in circumstances such as those at issue before the referring court — in which, in an urban district mainly lived in by inhabitants of Roma origin, all the electricity meters are placed on pylons forming part of the overhead electricity supply network at a height of between six and seven metres, whereas such meters are placed at a height of less than two metres in the other districts — irrespective of whether that collective measure affects persons who have a certain ethnic origin or those who, without possessing that origin, suffer, together with the former, the less favourable treatment or particular disadvantage resulting from that measure.**
2. **Directive 2000/43, in particular Article 2(1) and (2)(a) and (b) thereof, must be interpreted as precluding a national provision which lays down that, in order to be able to conclude that there is direct or indirect discrimination on the grounds of racial or ethnic origin in the areas covered by Article 3(1) of the directive, the less favourable treatment or the particular disadvantage to which Article 2(2)(a) and (b) respectively refer must consist in prejudice to rights or legitimate interests.**

3. Article 2(2)(a) of Directive 2000/43 must be interpreted as meaning that a measure such as that described in paragraph 1 of this operative part constitutes direct discrimination within the meaning of that provision if that measure proves to have been introduced and/or maintained for reasons relating to the ethnic origin common to most of the inhabitants of the district concerned, a matter which is for the referring court to determine by taking account of all the relevant circumstances of the case and of the rules relating to the reversal of the burden of proof that are envisaged in Article 8(1) of the directive.
4. Article 2(2)(b) of Directive 2000/43 must be interpreted as meaning that:
 - that provision precludes a national provision according to which, in order for there to be indirect discrimination on the grounds of racial or ethnic origin, the particular disadvantage must have been brought about for reasons of racial or ethnic origin;
 - the concept of an ‘apparently neutral’ provision, criterion or practice as referred to in that provision means a provision, criterion or practice which is worded or applied, ostensibly, in a neutral manner, that is to say, having regard to factors different from and not equivalent to the protected characteristic;
 - the concept of ‘particular disadvantage’ within the meaning of that provision does not refer to serious, obvious or particularly significant cases of inequality, but denotes that it is particularly persons of a given racial or ethnic origin who are at a disadvantage because of the provision, criterion or practice at issue;
 - assuming that a measure, such as that described in paragraph 1 of this operative part, does not amount to direct discrimination within the meaning of Article 2(2)(a) of the directive, such a measure is then, in principle, liable to constitute an apparently neutral practice putting persons of a given ethnic origin at a particular disadvantage compared with other persons, within the meaning of Article 2(2)(b);
 - such a measure would be capable of being objectively justified by the intention to ensure the security of the electricity transmission network and the due recording of electricity consumption only if that measure did not go beyond what is appropriate and necessary to achieve those legitimate aims and the disadvantages caused were not disproportionate to the objectives thereby pursued. That is not so if it is found, a matter which is for the referring court to determine, either that other appropriate and less restrictive means enabling those aims to be achieved exist or, in the absence of such other means, that that measure prejudices excessively the legitimate interest of the final consumers of electricity inhabiting the district concerned, mainly lived in by inhabitants of Roma origin, in having access to the supply of electricity in conditions which are not of an offensive or stigmatising nature and which enable them to monitor their electricity consumption regularly.

[Signatures]