



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

9 March 2017^{1*}

(Reference for a preliminary ruling — Social policy — Equal treatment in employment and occupation — United Nations Convention on the Rights of Persons with Disabilities — Articles 5 and 27 — Directive 2000/78/EC — Article 7 — Enhanced protection in the event of dismissal of employees with disabilities — No such protection for civil servants with disabilities — General principle of equal treatment)

In Case C-406/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), made by decision of 16 July 2015, received at the Court on 24 July 2015, in the proceedings

Petya Milkova

v

Izpalnitelen direktor na Agentsiata za privatizatsia i sledprivatizatsionen control,

intervening parties:

Varhovna administrativna prokuratura,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Prechal (Rapporteur), A. Rosas, C. Toader and E. Jarašiūnas, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Bulgarian Government, by D. Drambozova and E. Petranova, 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 27 October 2016,

¹ — Language of the case: Bulgarian.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 4 and 7 of 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), and of 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').
- 2 The request has been made in proceedings between Ms Petya Milkova and the Izpalnitelen direktorna Agentsiata za privatizatsia i sledprivatizatsionen kontrol (Executive Director of the Privatisation and Post-Privatisation Control Agency, Bulgaria) ('the Agency') concerning Ms Milkova's dismissal.

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 Under Article 5 of that convention, entitled 'Equality and non-discrimination':

'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 as follows:

'States Parties recognise the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with

disabilities. States Parties shall safeguard and promote the realisation of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

...

(h) promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

...'

EU law

6 Recital 27 of Directive 2000/78 states:

'In its Recommendation 86/379/EEC of 24 July 1986 on the employment of disabled people in the Community [OJ 1986 L 225, p. 43], the Council established a guideline framework setting out examples of positive action to promote the employment and training of disabled people, and in its Resolution of 17 June 1999 on equal employment opportunities for people with disabilities [OJ 1999 C 186, p. 3], affirmed the importance of giving specific attention inter alia to recruitment, retention, training and lifelong learning with regard to disabled persons.'

7 According to Article 1, the purpose of Directive 2000/78 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;

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

- (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or
- (ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.

...'

9 Under Article 3(1) of that directive:

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

...

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

...’

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

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

11 Article 7 of Directive 2000/78, headed ‘Positive action’, is worded as follows:

‘1. With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds referred to in Article 1.

2. With regard to disabled persons, the principle of equal treatment shall be without prejudice to the right of Member States to maintain or adopt provisions on the protection of health and safety at work or to measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment.’

Bulgarian law

12 The kodeks na truda (Labour Code) (DV No 26 of 1 April 1986 and No 27 of 4 April 1986), which entered into force on 1 January 1987, is, according to Article 1, the main legislative measure regulating ‘labour relationships between worker or employee and employer and other relationships immediately related to them’.

13 Article 328 of the Labour Code, governing the termination of contracts of employment by the employer after notice has been given, provides, in paragraph 1, item 2:

‘An employer may terminate a contract of employment by issuing written notice to the worker or employee; such notice must comply with the periods provided for in Article 326(2), in the following cases:

...

2. in the event of the closure of part of the undertaking or the abolition of posts;

...’

- 14 Article 333 of the Labour Code, entitled ‘Protection in the event of dismissal’, provides in paragraph 1, item 3:

‘In the cases defined in Article 328(1), items 2, 3, 5 and 11, and in Article 330(2), item 6, the employer may carry out dismissals only with the prior authorisation of the labour inspectorate in each case:

...

3. [in the case of] a worker suffering from an illness defined in a decree issued by the Minister for Health;

...’

- 15 The zakon za administratsiata (Law on Public Administration) (DV No 130 of 5 November 1998), which entered into force on 6 December 1998, governs administrative organisation. Article 12 of that law provides:

‘(1) The activities of the administration shall be carried out by civil servants and [non-civil-service] employees.

(2) Regulations on recruitment and staff regulations of civil servants shall be laid down by law.

(3) Persons employed in the administrative authority on the basis of a contract of employment shall be employed in accordance with the Labour Code.’

- 16 Article 1 of the zakon za darzhavnia sluzhitel (Civil Service Law) (DV No 67 of 27 July 1999), which entered into force on 27 August 1999, governs ‘the ... content and termination of the employment relationship between the State and its civil servants in the exercise and on the occasion of the exercise of their duties, except in so far as a special law provides otherwise’.

- 17 Article 106 of the Civil Service Law, which governs termination of the employment relationship by the appointing authority, after notice has been given, provides in paragraph 1, item 2:

‘The appointing authority may terminate the employment relationship giving one month’s notice in the following cases:

...

2. where the post is abolished;

...’

- 18 The Civil Service Law does not contain any provision analogous to Article 333(1), item 3, of the Labour Code.

- 19 Article 1 of Naredba No 5 za bolestite, pri koito rabotnitsite, boleduvashiti ot tyah, imat osobena zakrila saglasno chl. 333, al. 1, ot kodeksa na trud (Decree No 5 on illnesses, entitling employees suffering from an illness to specific protection in accordance with Article 333(1) of the Labour Code) (DV No 33 of 28 April 1987), adopted by the Minister for Public Health and the Central Council of Bulgarian Trade Associations, provides as follows:

‘In case of partial dissolution, abolition of a post or cessation of work for longer than 30 days, the undertaking may dismiss employees suffering from one of the following illnesses only with the prior authorisation of the competent district labour inspectorate:

...

5. mental illness;

...’

- 20 The zakon za zashtita ot diskriminatsia (Law on protection against discrimination) (DV No 86 of 30 September 2003), which entered into force on 1 January 2004, is the legislative measure which governs protection against all forms of discrimination, contributes to their elimination and ensures the transposition of directives relating to equal treatment.

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

- 21 It is apparent from the order for reference that Ms Milkova occupied the post of ‘junior expert’ in the ‘control of privatisation contracts’ unit of the ‘post-privatisation control’ directorate of the Agency from 10 October 2012. The structure of that Agency allows for posts to be occupied both by civil servants, such as Ms Milkova, and employees.
- 22 In 2014, the number of posts within the Agency was reduced from 105 to 65.
- 23 Ms Milkova was informed that her employment relationship would be terminated in one month as the post she occupied was to be abolished.
- 24 By a decision of the Executive Director of the Agency, Ms Milkova’s employment relationship with her employer was terminated with effect from 1 March 2014 in accordance with Article 106(1), item 2, of the Civil Service Law.
- 25 Ms Milkova brought an action challenging that decision before the Administrativen sad Sofia-grad (Administrative Court for the City of Sofia, Bulgaria), in which she claimed that her dismissal without the prior authorisation of the labour inspectorate, as provided for in Article 333(1), item 3, of the Labour Code, was unlawful. That court dismissed her action on the ground that there was no infringement of the applicable law. According to that court, Article 333(1), item 3, does not apply to the termination of the employment relationship of civil servants. It follows that, even though the applicant suffers from a mental illness which has resulted in a disability rating of 50%, the termination of the employment relationship at issue in the main proceedings is lawful.
- 26 In the appeal on a point of law brought against that court’s decision before the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), Ms Milkova maintained her argument relied on before the court of first instance and reiterated the plea alleging that the employer’s decision to terminate the employment relationship was unlawful.
- 27 The Agency’s executive director contends that such authorisation was not necessary and that the contested decision is lawful.

- 28 Although the referring court considers that the alleged difference in treatment is not based on the personal characteristic arising from the ‘disability’, but on the differing nature of the legal relationship under which the persons concerned carry on their occupational activity, that court does not rule out the possibility that legislation such as that at issue in the main proceedings conflicts with the requirements for ensuring equality in employment and occupation for all persons with disabilities, as provided for by EU law and the UN Convention.
- 29 According to the referring court, the additional protection conferred on all persons with certain disabilities, introduced in 1987, was effectively withdrawn from civil servants through the adoption of the Civil Service Law in 1999, without any express statement of reasons for the draft law having been drawn up by its author. However, that protection was preserved for all employees, including those employed in the public sector.
- 30 In addition, the referring court is not certain to what extent the rules adopted by the Republic of Bulgaria, which constitute specific measures to protect persons with disabilities, but only where they have the status of employees, even though they are employed in the public sector, may be qualified as ‘positive action’ for the purposes of Article 7 of Directive 2000/78.
- 31 The referring court makes express reference to the judgment of 18 March 2014, Z. (C-363/12, EU:C:2014:159), according to which Directive 2000/78 should be interpreted in a manner that is consistent with the UN Convention which, in the opinion of that court, requires persons with disabilities to be afforded fair and effective statutory protection against discrimination of any kind regardless of the nature of their disability, and not merely by reason of certain protected personal characteristics, as laid down by EU secondary legislation.
- 32 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 Article 5(2) of the UN Convention ... allow legislation whereby Member States provide specific advance protection in the event of dismissal of employees with disabilities, but not of civil servants with the same disabilities?
- (2) Does Article 4, along with the other provisions of Directive [2000/78], permit a legal framework conferring specific advance protection in the event of dismissal of employees with disabilities, but not of civil servants with the same disabilities?
- (3) Does Article 7 of Directive 2000/78 permit employees with disabilities, but not civil servants with the same disabilities, to be afforded specific advance protection in the event of dismissal?
- (4) If the first and third questions are answered in the negative, is it necessary, in the light of the facts and circumstances of the present case, in order to comply with the provisions of international and Community law, that the specific advance protection in the event of dismissal of employees with disabilities provided for by the national legislator should also be applied to civil servants with the same disabilities?’

Consideration of the questions referred

The first and third questions

- 33 By its first and third questions, which it is appropriate to examine together, the referring court asks in essence whether the provisions of Directive 2000/78, specifically Article 7, read in the light of the UN Convention, must be interpreted to the effect that they allow legislation of a Member State, such as that at issue in the main proceedings, which confers on employees with certain disabilities specific advance protection in the event of dismissal, without conferring such protection on civil servants with the same disabilities.
- 34 As a preliminary point, it should be recalled that the purpose of Directive 2000/78, as stated in Article 1 thereof, is to lay down a general framework for combating discrimination, as regards employment and occupation, on any of the grounds referred to in that article, which include disability. In that regard, as is apparent in particular from Article 2(1) of that directive, the principle of equal treatment which it affirms applies by reference to those grounds listed exhaustively in Article 1 (judgments of 7 July 2011, *Agafitei and Others*, C-310/10, EU:C:2011:467, paragraph 34, and of 21 May 2015, *SCMD*, C-262/14, not published, EU:C:2015:336, paragraph 29).
- 35 The Court must therefore examine whether a situation such as that at issue in the main proceedings comes within the scope of Directive 2000/78.
- 36 In the first place, the concept of ‘disability’ within the meaning of Directive 2000/78 has to be understood as referring to a limitation 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 (judgment of 1 December 2016, *Daouidi*, C-395/15, EU:C:2016:917, paragraph 42 and the case-law cited).
- 37 It is apparent from the file before the Court that the mental illness from which Ms Milkova suffers does constitute a ‘disability’ within the meaning of Directive 2000/78.
- 38 In the second place, in accordance with Article 3(1)(c) of that directive, the latter applies, within the limits of the areas of competence conferred on the European Union, to all persons, in both the public and private sectors, in relation to, inter alia, the conditions governing dismissal.
- 39 Therefore, as was stated by the Advocate General in point 46 of his Opinion, the regime to which Ms Milkova was made subject by the public entity that employed her at the time when her civil service employment relationship was terminated may be caught by the substantive scope of that directive.
- 40 However, according to the order for reference, the difference in treatment at issue in the main proceedings is not based on one of the grounds listed in Article 1 of Directive 2000/78, but is, by contrast, applied on the basis of the nature of the employment relationship as provided for in the national legislation.
- 41 It is clear from the national legal framework, as set out by the referring court, that Article 333(1), item 3, of the Labour Code, read in conjunction with Article 328(1), item 2, of that code, provides that advance authorisation must be granted by the competent public authority, that is to say, the labour inspectorate, before the employment contract of a worker may be terminated as a result of the abolition of a position, where that worker suffers from an illness covered by Article 1(1) of Decree No 5 on illnesses, entitling employees suffering from an illness to specific protection in accordance with Article 333(1) of the Labour Code, of which item 5, relevant to these proceedings, covers ‘mental

illness'. It is clear from the order for reference that that advance authorisation does not apply where it was decided to terminate a civil service employment relationship on the basis of the abolition of posts under Article 106(1), item 2, of the Civil Service Law.

- 42 Thus, it does not appear that the national legislation at issue in the main proceedings establishes a difference of treatment on grounds of disability, in terms of the combined provisions of Article 1 and Article 2(2)(a) of Directive 2000/78, since it uses a criterion that is not inseparably linked to disability (see, by analogy, judgment of 11 April 2013, *HK Danmark*, C-335/11 and C-337/11, EU:C:2013:222, paragraphs 72 to 74).
- 43 Furthermore, it does not appear from the file before the Court that the national legislation at issue in the main proceedings, albeit formulated in neutral terms, that is to say, by reference to other criteria — in the present case, the nature of the employment relationship — which are not related to the protected characteristic — in the present case, disability — would lead to the result that particularly persons possessing that characteristic are put at a disadvantage, involving indirect discrimination within the meaning of the Court's case-law on that concept (see, to that effect, judgment of 18 March 2014, *Z.*, C-363/12, EU:C:2014:159, paragraph 53).
- 44 Finally, as regards discrimination on the basis of the employment relationship itself, the Court has held that such discrimination does not fall within the general framework laid down by Directive 2000/78 (see, to that effect, judgment of 7 July 2011, *Agafitei and Others*, C-310/10, EU:C:2011:467, paragraphs 31 to 35).
- 45 In the present case, however, the Bulgarian Government argues that national legislation, such as that at issue in the main proceedings, which establishes a distinction between employees with a disability and employees without a disability, in relation to specific advance protection in the event of dismissal intended only for the former employees, essentially includes 'positive action' for the purposes of Article 7(2) of Directive 2000/78.
- 46 In that regard, it must be recalled that that provision allows a distinction to be established, based on disability, provided that it forms part of provisions on the protection of health and safety at work or measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting the integration of persons with disabilities into the working environment. Thus, such a distinction in favour of people with disabilities contributes to achieving the aim of Directive 2000/78, as laid down in Article 1 of that directive, that is to say, the fight against discrimination, in the present case, based on disability as regards employment and occupation, with a view to putting into effect in the Member State concerned the principle of equal treatment (see, to that effect, judgment 17 July 2008, *Coleman*, C-303/06, EU:C:2008:415, paragraph 42).
- 47 The purpose of Article 7(2) of Directive 2000/78 is to authorise specific measures aimed at effectively eliminating or reducing actual instances of inequality affecting people with disabilities, which may exist in their social lives and, in particular, their professional lives, and to achieve substantive, rather than formal, equality by reducing those inequalities.
- 48 That interpretation is supported by the UN Convention which, in accordance with settled case-law, may be relied on for the purposes of interpreting Directive 2000/78, which must, as far as possible, be interpreted in a manner that is consistent with that convention (judgment of 1 December 2016, *Daouidi*, C-395/15, EU:C:2016:917, paragraph 41 and the case-law cited).
- 49 It must be pointed out, first, that by virtue of Article 27(1)(h) of the UN Convention, States Parties are to 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, inter alia, to promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and

other measures. Secondly, under Article 5(1) of that convention, States Parties must 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, while Article 5(4) of that convention also expressly authorises specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities.

- 50 It follows from the foregoing that the legislation at issue in the main proceedings comes within the scope of Article 7(2) of Directive 2000/78 and, as such, pursues an objective covered by EU law, for the purposes of the Court's settled case-law adopted in order to determine whether such a national measure falls within the implementation of EU law within the meaning of Article 51(1) of the Charter of Fundamental Rights of the European Union ('the Charter') (see, to that effect, judgments of 6 March 2014, *Siragusa*, C-206/13, EU:C:2014:126, paragraphs 22 and 25 and the case-law cited, and of 10 July 2014, *Julián Hernández and Others*, C-198/13, EU:C:2014:2055, paragraph 37).
- 51 According to established case-law, where Member States act within the scope of EU law, they are required to respect fundamental rights defined in the context of the European Union and the general principles of EU law (see, to that effect, judgment of 10 July 2014, *Julián Hernández and Others*, C-198/13, EU:C:2014:2055, paragraph 33).
- 52 The fact that, as is apparent from Article 7(2) of Directive 2000/78, Member States are not required to maintain or adopt measures such as those provided for under that provision, but have discretion in that regard, does not permit the conclusion that rules adopted by Member States, such as those at issue in the main proceedings, fall outside the scope of EU law (see, by analogy, judgments of 21 December 2011, *N. S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraphs 64 to 69, and of 22 October 2013, *Sabou*, C-276/12, EU:C:2013:678, paragraph 26).
- 53 In that regard, it must also be recalled that where EU legislation allows Member States a choice between various methods of implementation, the Member States must exercise their discretion in accordance with general principles of EU law, including the principle of equal treatment (see, to that effect, judgments of 20 June 2002, *Mulligan and Others*, C-313/99, EU:C:2002:386, paragraph 46, and of 16 July 2009, *Horvath*, C-428/07, EU:C:2009:458, paragraph 56, and order of 16 January 2014, *Dél-Zempléni Nektár Leader Nonprofit*, C-24/13, EU:C:2014:40, paragraph 17).
- 54 It follows that the national legislation applicable to the main proceedings falls within the implementation of EU law, which means that, in the present case, the general principles of EU law, including the principle of equal treatment, and of the Charter are applicable (see, to that effect, judgment of 10 July 2014, *Julián Hernández and Others*, C-198/13, EU:C:2014:2055, paragraph 33).
- 55 The principle of equal treatment is a general principle of EU law, now enshrined in Articles 20 and 21 of the Charter, which requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (judgments of 22 May 2014, *Glatzel*, C-356/12, EU:C:2014:350, paragraph 43, and of 21 December 2016, *Vervloet and Others*, C-76/15, EU:C:2016:975, paragraph 74 and the case-law cited). A difference in treatment is justified if it is based on an objective and reasonable criterion, that is, if the difference relates to a legally permitted aim pursued by the legislation in question, and it is proportionate to the aim pursued by the treatment (judgment of 22 May 2014, *Glatzel*, C-356/12, EU:C:2014:350, paragraph 43 and the case-law cited).
- 56 With regard to the requirement relating to the comparability of the situations for the purpose of determining whether there is an infringement of the principle of equal treatment, that requirement must be assessed in the light of all the factors characterising those situations (see, inter alia, judgments of 16 December 2008, *Arcelor Atlantique et Lorraine and Others*, C-127/07, EU:C:2008:728, paragraph 25, and of 1 October 2015, *O*, C-432/14, EU:C:2015:643, paragraph 31).

- 57 It must also be made clear, first, that it is required not that the situations be identical, but only that they be comparable and, secondly, that the assessment of that comparability must be carried out not in a global and abstract manner, but in a specific and concrete manner in the light of the objective and of the aim of the national legislation creating the distinction at issue (see, to that effect, judgments of 10 May 2011, *Römer*, C-147/08, EU:C:2011:286, paragraph 42; of 12 December 2013, *Hay*, C-267/12, EU:C:2013:823, paragraph 33; of 15 May 2014, *Szatmári Malom*, C-135/13, EU:C:2014:327, paragraph 67; and of 1 October 2015, *O*, C-432/14, EU:C:2015:643, paragraph 32).
- 58 Thus, the comparison of the situations must be based on an analysis focusing on all the rules of national law governing, on the one hand, the positions of employees with a particular disability and, on the other, the positions of civil servants with the same disability, as they result from the relevant domestic provisions applicable to the present case, taking into account the purpose of the protection against the dismissal at issue in the main proceedings.
- 59 In that regard, it must be stated, first, that, by raising the special nature of the protection provided under Bulgarian law, the referring court makes it clear that the purpose of that protection is to ensure that a specialised body assesses the impact of the dismissal on the health of the person concerned and decides whether or not to authorise that dismissal.
- 60 Thus, the purpose of legislation such as that at issue in the main proceedings is to protect a worker, not on the basis of the type of legal connection which constitutes the employment relationship, but on the basis of the worker's state of health.
- 61 Therefore, the distinction made by such legislation between employees with a particular disability and civil servants with the same disability does not appear to be sufficient in the light of the aim pursued by that legislation, all the more so since both those categories of people with disabilities may be employed by the same administration.
- 62 As regards the alleged difference in treatment in the main proceedings, it is for the national court to determine whether all the applicable national rules of law provide a level of protection for civil servants with disabilities which is equivalent to that provided for under the mechanism for prior authorisation from the labour inspectorate in relation to employees with disabilities, employed in the public administration sector.
- 63 Finally, if the referring court were to find that there is a difference in treatment between those groups of persons who are in a comparable situation, it would ultimately fall to that court, which alone has jurisdiction to assess the facts at issue in the dispute before it and to interpret the applicable national legislation, to determine whether, and to what extent, legislation of a Member State, such as that at issue in the main proceedings, is objectively justified in the light of the principle of equal treatment.
- 64 In view of all the foregoing considerations, the answer to the first and third questions is that Article 7(2) of Directive 2000/78, read in the light of the UN Convention and in conjunction with the general principle of equal treatment enshrined in Articles 20 and 21 of the Charter, must be construed as allowing legislation of a Member State, such as that at issue in the main proceedings, which confers on employees with certain disabilities specific advance protection in the event of dismissal, without conferring such protection on civil servants with the same disabilities, unless it has been established that there has been an infringement of the principle of equal treatment, that being a matter for the referring court to determine. When making that determination, the comparison of the situations must be based on an analysis focusing on all the relevant rules of national law governing the positions of employees with a particular disability, on the one hand, and the positions of civil servants with the same disability, on the other, having regard, in particular, to the purpose of the protection against dismissal at issue in the main proceedings.

The fourth question

- 65 By its fourth question, the referring court asks in essence whether, if the first and third questions are answered in the negative, the obligation to comply with EU law requires that, in a situation such as that at issue in the main proceedings, the scope of the national rules protecting employees with a particular disability is extended so that those protective rules also benefit civil servants with the same disability.
- 66 In that regard it must be recalled that, according to settled case-law, where discrimination contrary to EU law has been established, as long as measures reinstating equal treatment have not been adopted, observance of the principle of equality can be ensured only by granting to persons within the disadvantaged category the same advantages as those enjoyed by persons within the favoured category (judgments of 26 January 1999, *Terhoeve*, C-18/95, EU:C:1999:22, paragraph 57; of 22 June 2011, *Landtová*, C-399/09, EU:C:2011:415, paragraph 51; and of 28 January 2015, *ÖBB Personenverkehr*, C-417/13, EU:C:2015:38, paragraph 46). Disadvantaged persons must therefore be placed in the same position as persons enjoying the advantage concerned (judgment of 11 April 2013, *Soukupová*, C-401/11, EU:C:2013:223, paragraph 35).
- 67 In such a situation, a national court must set aside any discriminatory provision of national law, without having to request or await its prior removal by the legislature, and apply to members of the disadvantaged group the same arrangements as those enjoyed by the persons in the other category (judgments of 12 December 2002, *Rodríguez Caballero*, C-442/00, EU:C:2002:752, paragraph 43; of 7 September 2006, *Cordero Alonso*, C-81/05, EU:C:2006:529, paragraph 46; and of 21 June 2007, *Jonkman and Others*, C-231/06 to C-233/06, EU:C:2007:373, paragraph 39). That obligation persists regardless of whether or not the national court has been granted competence under national law to do so (judgment of 7 September 2006, *Cordero Alonso*, C-81/05, EU:C:2006:529, paragraph 46).
- 68 In that regard, the Court has stated that that approach is intended to apply only if there is a valid point of reference (judgments of 19 June 2014, *Specht and Others*, C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005, paragraph 96, and of 28 January 2015, *ÖBB Personenverkehr*, C-417/13, EU:C:2015:38, paragraph 47). That is so in the case in the main proceedings.
- 69 In the event that the referring court finds that the principle of equal treatment has not been adhered to, it follows that Article 7(2) of Directive 2000/78, read in the light of the UN Convention, precludes legislation of a Member State such as that at issue in the main proceedings. The system applicable to employees with disabilities, favoured by the current system, is therefore the only valid point of reference. Thus, re-establishing equal treatment, in a situation such as that at issue in the main proceedings, involves granting civil servants with disabilities, disadvantaged by the current system, the same benefits as those enjoyed by employees with disabilities, favoured by that system, in particular in respect of specific advance protection in the event of dismissal and involving the obligation, for the employer, to seek prior authorisation from the labour inspectorate before terminating the employment relationship (see, by analogy, judgment of 28 January 2015, *ÖBB Personenverkehr*, C-417/13, EU:C:2015:38, paragraph 48).
- 70 It follows from the foregoing considerations that the answer to the fourth question is that, in the event that Article 7(2) of Directive 2000/78, read in the light of the UN Convention and in conjunction with the general principle of equal treatment, precludes legislation of a Member State such as that at issue in the main proceedings, the obligation to comply with EU law would require that the scope of the national rules protecting employees with a particular disability should be extended so that those protective rules also benefit civil servants with the same disability.

The second question

- 71 By its second question, the referring court asks, in essence, whether Article 4 of Directive 2000/78, along with the other provisions of that directive, permit a legal framework conferring specific advance protection in the event of dismissal of employees with disabilities, but not of civil servants with the same disabilities.
- 72 According to the Court's settled case-law, the requirements concerning the content of a request for a preliminary ruling are expressly set out in Article 94 of the Court's Rules of Procedure, of which the national court should, in the context of the cooperation instituted by Article 267 TFEU, be aware and which it is bound to observe scrupulously (judgments of 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514, paragraph 19, and of 10 November 2016, *Private Equity Insurance Group*, C-156/15, EU:C:2016:851, paragraph 61 and the case-law cited).
- 73 Thus, the court making the reference must set out the precise reasons that led it to raise the question of the interpretation of certain provisions of EU law and to consider it necessary to refer questions to the Court for a preliminary ruling. The Court has previously held that it is essential that the national court should give at the very least some explanation of the reasons for the choice of the EU law provisions which it seeks to have interpreted and of the link it establishes between those provisions and the national legislation applicable to the proceedings pending before it (judgments of 10 March 2016, *Safe Interenvíos*, C-235/14, EU:C:2016:154, paragraph 115, and of 10 November 2016, *Private Equity Insurance Group*, C-156/15, EU:C:2016:851, paragraph 62).
- 74 It should be noted in that regard that the information provided in requests for a preliminary ruling serves not only to enable the Court to provide useful answers to the questions submitted by the referring court, but also to ensure that the governments of the Member States and other interested parties have the opportunity to submit observations, in accordance with Article 23 of the Statute of the Court of Justice of the European Union (judgment of 10 November 2016, *Private Equity Insurance Group*, C-156/15, EU:C:2016:851, paragraph 63, and, to that effect, judgment of 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514, paragraph 20).
- 75 In the present case, the referring court merely submits its second question without providing any further explanation in the grounds of the order for reference. It merely refers generally to Article 4 of Directive 2000/78, along with the other provisions of that directive, without establishing a link between those provisions and the national legislation at issue in the main proceedings.
- 76 In the light of those shortcomings, the order for reference does not provide the governments of the other Member States or other interested parties within the meaning of Article 23 of the Statute of the Court of Justice with the opportunity to submit useful observations on that second question or the Court to provide the referring court with a useful answer to that question to enable it to resolve the dispute pending before it (see, by analogy, judgment of 10 November 2016, *Private Equity Insurance Group*, C-156/15, EU:C:2016:851, paragraph 66).
- 77 Accordingly, the second question is inadmissible.

Costs

- 78 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:

1. **Article 7(2) of Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, read in the light 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, and in conjunction with the general principle of equal treatment enshrined in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, must be construed as allowing legislation of a Member State, such as that at issue in the main proceedings, which confers on employees with certain disabilities specific advance protection in the event of dismissal, without conferring such protection on civil servants with the same disabilities, unless it has been established that there has been an infringement of the principle of equal treatment, that being a matter for the referring court to determine. When making that determination, the comparison of the situations must be based on an analysis focusing on all the relevant rules of national law governing the positions of employees with a particular disability, on the one hand, and the positions of civil servants with the same disability, on the other, having regard, in particular, to the purpose of the protection against dismissal at issue in the main proceedings.**
2. **In the event that Article 7(2) of Directive 2000/78, read in the light of the United Nations Convention on the Rights of Persons with Disabilities and in conjunction with the general principle of equal treatment, precludes legislation of a Member State such as that at issue in the main proceedings, the obligation to comply with EU law would require that the scope of the national rules protecting employees with a particular disability should be extended, so that those protective rules also benefit civil servants with the same disability.**

[Signatures]