Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

22 May 2014*

(Request for a preliminary ruling — Transport — Directive 2006/126/EC — Point 6.4 of Annex III — Validity — Charter of Fundamental Rights of the European Union — Articles 20, 21(1) and 26 — United Nations Convention on the Rights of Persons with Disabilities — Driving licences — Physical and mental fitness to drive a motor vehicle — Minimum standards — Visual acuity — Equal treatment — No possibility of derogation — Proportionality)

In Case C-356/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bayerischer Verwaltungsgerichtshof (Germany), made by decision of 5 July 2012, received at the Court on 27 July 2012, in the proceedings

Wolfgang Glatzel

v

Freistaat Bayern,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, E. Juhász, A. Rosas (Rapporteur), D. Šváby and C. Vajda, Judges,

Advocate General: Y. Bot,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 20 June 2013,

after considering the observations submitted on behalf of:

— Mr Glatzel, by E. Giebler, Rechtsanwalt,

— Freistaat Bayern, by M. Niese, acting as Agent,

— the German Government, by T. Henze and K. Petersen, acting as Agents,

— the European Parliament, by A. Troupiotis and P. Schonard, acting as Agents,

— the Council of the European Union, by E. Karlsson, R. Wiemann and Z. Kupčová, acting as Agents,

* Language of the case: German.

— the European Commission, by G. Braun and J. Hottiaux, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 July 2013,

gives the following

Judgment

1 This request for a preliminary ruling concerns the compatibility of point 6.4 of Annex III to Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ 2006 L 403, p. 18 and corrigendum OJ 2009 L 19, p. 67), as amended by Commission Directive 2009/113/EC of 25 August 2009 (OJ 2009 L 223, 'Directive 2006/126'), with Articles 20, 21(1) and 26 of the Charter of Fundamental Rights of the European Union ('the Charter'), concerning the minimum standards relating to the physical fitness to drive a motor vehicle as regards visual acuity.

2 The request has been made in proceedings between Mr Glatzel and Freistaat Bayern concerning the decision by which Mr Glatzel was refused a driving licence for vehicles in categories C1 and C1E, as defined by Directive 2006/126, on the ground that the visual acuity in his worse eye does not reach the minimum level required in point 6.4 of Annex III to that directive.

Legal context

International law

3 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 on Disabilities'), states in recital (e) in the preamble thereto:

'The States Parties to the present Convention,

…

(e) Recognising that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.'

4 Under Article 1 of that convention, entitled 'Purpose':

'The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.'

5 Article 2 of that convention, entitled 'Definitions', provides:

'For the purposes of this convention:

…

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

…'

6 Article 4 of the UN Convention on Disabilities, entitled 'General obligations', states:

'1. States Parties undertake to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

(a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention;

(b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;

(c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;

(d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

(e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise;

…'

7 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.'

8 Article 27(1)(a) of that convention, entitled 'Work and employment', provides:

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

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

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

European Union law

9 According to recital 8 in the preamble to Directive 2006/126:

'On road safety grounds, the minimum requirements for the issue of a driving licence should be laid down. Standards for driving tests and licensing need to be harmonised. To this end the knowledge, skills and behaviour connected with driving motor vehicles should be defined, the driving test should be based on these concepts and the minimum standards of physical and mental fitness for driving such vehicles should be redefined.'

10 Recital 14 in the preamble to that directive states:

'Specific provisions should be adopted to make it easier for physically disabled persons to drive vehicles.'

11 Recital 19 in the preamble to the directive states:

'The Commission should be allowed to undertake the adaptation of Annexes I to VI to scientific and technical progress.'

12 Article 4 of Directive 2006/126, entitled 'Categories, definitions and minimum ages', provides:

'1. The driving licence provided for in Article 1 shall authorise the driving of power-driven vehicles in the categories defined hereafter. …

…

4. motor vehicles:

…

(d) Category C1:

motor vehicles other than those in categories D1 or D, the maximum authorised mass of which exceeds 3 500 kg, but does not exceed 7 500 kg, and which are designed and constructed for the carriage of no more than eight passengers in addition to the driver; motor vehicles in this category may be combined with a trailer having a maximum authorised mass not exceeding 750 kg;

(e) Category C1E:

— without prejudice to the provisions of type-approval rules for the vehicles concerned, combinations of vehicles where the tractor vehicle is in category C1 and its trailer or semi-trailer has a maximum authorised mass of over 750 kg provided that the authorised mass of the combination does not exceed 12 000 kg,

— without prejudice to the provisions of type-approval rules for the vehicles concerned, combinations of vehicles where the tractor vehicle is in category B and its trailer or semi-trailer has an authorised mass of over 3 500 kg, provided that the authorised mass of the combination does not exceed 12 000 kg,

— the minimum age for categories C1 and C1E is fixed at the age of 18 years, without prejudice to the provisions for the driving of such vehicles in Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers [amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC (OJ 2003 L 226, p. 4)];

…’

13 Under Article 7 of that directive, entitled ‘Issue, validity and renewal’:

‘1. Driving licences shall be issued only to those applicants:

(a) who have passed a test of skills and behaviour and a theoretical test and who meet medical standards, in accordance with the provisions of Annexes II and III;

…

3. The renewal of driving licences when their administrative validity expires shall be subject to:

(a) continuing compliance with the minimum standards of physical and mental fitness for driving set out in Annex III for driving licences in categories C, CE, C1, C1E, D, DE, D1, D1E; …

…’

14 Article 8 of that directive, entitled ‘Adaptation to scientific and technical progress’, provides:

‘The amendments necessary to adapt Annexes I to VI to scientific and technical progress shall be adopted in accordance with the procedure referred to in Article 9(2).’

15 Under Article 9 of Directive 2006/126, entitled ‘Committee’:

‘1. The Commission shall be assisted by the committee on driving licences.

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.’

16 Annex III to Directive 2006/126 concerns the minimum standards of physical and mental fitness for driving a power-driven vehicle, including the requirements covering eyesight. For the purposes of that annex, drivers are classified in two groups, namely group 1, comprising drivers of vehicles in categories A, A1, A2, AM, B, B1, and group 2, comprising drivers of vehicles in categories C, CE, C1, CIE, D, DE, D1 and D1E.

17 As regards medical examinations for eyesight, Annex III to Directive 2006/126 provides as follows :

‘6. All applicants for a driving licence shall undergo an appropriate investigation to ensure that they have adequate visual acuity for driving power-driven vehicles. Where there is reason to doubt that the applicant’s vision is adequate, he/she shall be examined by a competent medical

authority. At this examination attention shall be paid, in particular, to the following: visual acuity, field of vision, twilight vision, glare and contrast sensitivity, diplopia and other visual functions that can compromise safe driving.

For group 1 drivers, licensing may be considered in "exceptional cases" where the visual field standard or visual acuity standard cannot be met; in such cases the driver should undergo examination by a competent medical authority to demonstrate that there is no other impairment of visual function, including glare, contrast sensitivity and twilight vision. The driver or applicant should also be subject to a positive practical test conducted by a competent authority.

Group 1:

6.1 Applicants for a driving licence or for the renewal of such a licence shall have a binocular visual acuity, with corrective lenses if necessary, of at least 0,5 when using both eyes together.

Moreover, the horizontal visual field should be at least 120 degrees, the extension should be at least 50 degrees left and right and 20 degrees up and down. No defects should be present within a radius of the central 20 degrees.

When a progressive eye disease is detected or declared, driving licences may be issued or renewed subject to the applicant undergoing regular examination by a competent medical authority.

6.2 Applicants for a driving licence, or for the renewal of such a licence, who have total functional loss of vision in one eye or who use only one eye (e.g. in the case of diplopia) must have a visual acuity of at least 0,5, with corrective lenses if necessary. The competent medical authority must certify that this condition of monocular vision has existed for a sufficiently long time to allow adaptation and that the field of vision in this eye meets the requirement laid down in paragraph 6.1.

6.3 After any recently developed diplopia or after the loss of vision in one eye, there should be an appropriate adaptation period (for example, six months), during which driving is not allowed. After this period, driving is only allowed following a favourable opinion from vision and driving experts.

Group 2:

6.4 Applicants for a driving licence or for the renewal of such a licence shall have a visual acuity, with corrective lenses if necessary, of at least 0,8 in the better eye and at least 0,1 in the worse eye. If corrective lenses are used to attain the values of 0,8 and 0,1, the minimum acuity (0,8 and 0,1) must be achieved either by correction by means of glasses with a power not exceeding plus eight dioptres, or with the aid of contact lenses. The correction must be well tolerated.

Moreover, the horizontal visual field with both eyes should be at least 160 degrees, the extension should be at least 70 degrees left and right and 30 degrees up and down. No defects should be present within a radius of the central 30 degrees.

Driving licences shall not be issued to or renewed for applicants or drivers suffering from impaired contrast sensitivity or from diplopia.

After a substantial loss of vision in one eye, there should be an appropriate adaptation period (for example six months) during which the subject is not allowed to drive. After this period, driving is only allowed after a favourable opinion from vision and driving experts.'

18 According to point 1.3 of Annex III to Directive 2006/126, the Member States may provide for the provisions set out in that Annex for Group 2 drivers to apply to drivers of Category B vehicles using their driving licence for professional purposes (taxis, ambulances, etc.).

19 Furthermore, under point 5 of that annex, as regards group 2, the standards set by Member States for the issue or any subsequent renewal of driving licences may be stricter than those set out in that annex.

German law

20 The first sentence of Paragraph 2(2) of the German Road Traffic Law (Straßenverkehrsgesetz), in the version published on 5 March 2003 (BGBl. 2003 I, p. 310, corrigendum p. 919), as amended most recently by Paragraph 2(118) of the Law of 22 December 2011 (BGBl. 2011 I, p. 3044, 'the StVG'), is worded as follows:

'A driving licence must be issued for the category concerned where the applicant

…

3. is fit to drive motor vehicles,

…'

21 The first sentence of Paragraph 2(4) of the STVG defines 'fitness' as follows:

'Any person who satisfies the physical and mental requirements for driving power-driven vehicles who has not committed any serious or repeated offences against the road traffic provisions or the provisions of criminal law is to be deemed fit to drive power-driven vehicles.'

22 The specific requirements which must be satisfied in order for a person to be deemed fit to drive power-driven vehicles are laid down in the Regulation on the authorisation of persons to drive on the highway (the Regulation on driving licences) (Verordnung über die Zulassung von Personen zum Straßenverkehr (Fahrerlaubnis-Verordnung) of 13 December 2010 (BGBl. 2010 I, p. 1980), as amended most recently by the Regulation of 26 June 2012 (BGBl. I, p. 1394).

23 As regards vision, Paragraph 12(1) of that regulation provides:

'For the purposes of driving power-driven vehicles the applicant's vision must satisfy the requirements laid down in Annex 6.'

24 Point 2.2.1 of Annex 6 to that regulation provides :

'Central daytime visual acuity:

Any sight defect must be corrected, provided that such correction is possible and well tolerated, so as to comply with the following minimum values of visual acuity: acuity of the better eye or binocular visual acuity of 0,8; acuity in the worse eye of 0,5,

…

In certain special cases, taking into account driving experience and the use of the vehicle, the visual acuity of the worse eye may be less than 0,5 for categories C, CE, C1 and C1E, provided that it is no less than 0,1. An ophthalmological examination is necessary in such cases.'

The facts of the dispute and the question referred for a preliminary ruling

25 Mr Glatzel, who was born in 1959, lost his driving licence, by a judgment delivered in April 2010, on the ground that he had driven under the influence of alcohol.

26 By an administrative decision dating from November 2010, the Landratsamt Schwandorf partially upheld Mr Glatzel's application for a new driving licence authorising him to drive motor vehicles in categories A, A1 and BE, as defined in Directive 2006/126, and those in certain national categories granting the right to drive bicycles with a backup engine, light motorcycles, light motor vehicles with a maximum design speed of 45 km/h and tractors for building sites or agricultural purposes with a maximum design speed of 25 km/h and 32 km/h respectively.

27 However, by the same decision, Mr Glatzel's application for a new driving licence for categories C1 and C1E, in particular, heavy goods vehicles, was refused. The Landsratsamt Schwandorf justified the refusal on the ground that an ophthalmological examination had revealed that Mr Glatzel suffered from unilateral amblyopia, involving a substantial functional loss of vision in one eye. Although his central visual acuity in his left eye is 1,0 and therefore he has full visual acuity, and his binocular visual acuity is also 1,0, during the examination, Mr Glatzel was able to detect only hand movements with his right eye. Consequently, the visual acuity in Mr Glatzel's right eye does not satisfy the requirements laid down by German law for the issue of a driving licence for vehicles in the latter categories.

28 Following an unsuccessful objection against that decision, Mr Glatzel brought an action before the Verwaltungsgericht Regensburg (Administrative Court, Regensburg). Since that court dismissed his action, Mr Glatzel brought an appeal against that judgment before the referring court, the Bayerischer Verwaltungsgerichtshof.

29 The Bayerischer Verwaltungsgerichtshof ordered measures of inquiry and, in particular, requested an expert report from an ophthalmological service in order to establish the current state of Mr Glatzel's eyesight, and whether and, to what extent, he is able to compensate for any existing deficiencies, in this case in relation to his spatial vision, and whether those abilities to compensate exist independently of his will. Furthermore, by means of another expert report, the referring court seeks to establish, from a scientific point of view, there are proper grounds for refusing to issue a driving licence for categories C1 and C1E to persons with monocular vision for anatomical or functional reasons, even where it has been established that those persons are able to compensate sufficiently for any impairments in their vision. That court also seeks to establish which requirements must, where appropriate, be satisfied in order to ensure that the driving of vehicles in those categories by such persons poses no additional threat to road safety as compared with the driving of persons whose vision is in no way impaired.

30 In addition, at the hearing before the referring court, the experts expressed their view as to the likelihood of any loss of vision in one eye where the person concerned is driving a vehicle in category C1 and C1E, and whether such a loss of vision may occur so suddenly that the driver needs a residual visual acuity of 0,1, which he has in the other eye, in order to stop the vehicle on the side of the road.

31 On the basis of the information thus obtained, the Bayerischer Verwaltungsgerichtshof takes the view that Mr Glatzel's appeal should be upheld, that is to say the administrative decisions and the judgment given by the Verwaltungsgericht Regensburg should be set aside and that he should be issued with a driving licence for vehicles in categories C1 and C1E. That court observes that there is no ground on which to prohibit persons who have a visual acuity of less than 0,1 in one eye from driving a motor vehicle where, first, they have binocular vision, second, their field of binocular vision satisfies the requirements laid down in point 6.4 of Annex III to Directive 2006/126 and, third, they have learned fully to compensate for their lack of spatial vision.

32 With regard to the last mentioned point, the referring court states that a person with defective spatial vision adapts to that deficiency, where it appears during his life, within six months at the latest. Such adaptation, which, moreover, does not depend on the voluntary practice of certain behaviour by the person concerned, happens *a fortiori* where he suffers from a substantial visual impairment from birth, as in Mr Glatzel's case. Thus, the requirement laid down in point 6.4 of Annex III to Directive 2006/126, according to which group 2 drivers must have visual acuity of at least 0,1, is not based on the idea of addressing the lack of spatial vision of the persons concerned but to enable the driver of a motor vehicle in one of those categories to react to a sudden loss of vision in the better eye during a journey and to stop the vehicle on the side of the road using his residual vision.

33 The referring court states that the requirement of such residual visual acuity for the worse eye is objectively justified only with regard to persons who do not have binocular vision or whose field of binocular vision does not satisfy the requirements of point 6.4 of Annex III to Directive 2006/126. However, a person such as Mr Glatzel, who has a normal field of vision and whose visual impairments affect, in particular, his central visual acuity, would be capable of seeing objects appearing in his field of peripheral vision in essentially the same way as a person with normal vision and, would, therefore, be able to stop the power-driven vehicle he was driving even by using only his residual vision. The referring court adds that it is extremely rare that drivers of heavy goods vehicles lose the vision in one eye so suddenly that they must rely exclusively on their residual vision in the other eye to stop the vehicle.

34 The Bayerischer Veraltungsgerichtshof takes the view that the requirement laid down in point 6.4 of Annex III to Directive 2006/126 constitutes an interference with the fundamental rights guaranteed by Articles 20, 21(1) and 26 of the Charter, which concern equality before the law, non-discrimination on grounds of disability and the integration of persons with disabilities.

35 In particular, the fact that it is impossible for persons such as Mr Glatzel to have access to professional activities, the exercise of which in law or in practice requires authorisation to drive vehicles in categories C1 and C1E, constitutes discrimination on grounds of the disability of the person concerned. Furthermore, the differences between the requirements laid down by Annex III to Directive 2006/126 relating to the vision of applicants for the issue or renewal of driving licences according to whether they fall within group 1 or group 2, constitute an infringement of equal treatment. In any event, the referring court explains that the requirement of minimum visual acuity of 0,1 cannot be justified in certain situations and that an alternative more proportionate solution consists in the possibility of an individual examination to ascertain the ability to drive vehicles in categories C1 and C1E by a person with amblyopia, in the same way as for drivers of vehicles in group I of Annex III to Directive 2006/126.

36 In those circumstances, the Bayerischer Verwaltungsgerichtshof decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is point 6.4 of Annex III to [Directive 2006/126] compatible with Article 20, Article 21(1) and Article 26 of the [Charter] in so far as that provision requires — without permitting any derogation — that applicants for Category C1 and Category C1E driving licences have a minimum visual acuity of 0,1 in their worse eye even if those persons use both eyes together and have a normal field of vision when using both eyes?'

The question referred for a preliminary ruling

37 By its question, the referring court essentially asks the Court to determine the validity of point 6.4 of Annex III to Directive 2006/126, which concerns the minimum standards for the drivers of vehicles in categories C1 and C1E, in particular heavy goods vehicles, in the light of Articles 20, 21(1) and 26 of the Charter concerning equality before the law, non-discrimination on grounds of disability, and the integration of persons with disabilities.

38 In particular, the referring court considers that the requirement that the drivers of power-driven vehicles in categories C1 and C1E must have a minimum visual acuity of 0,1 for the worse eye, constitutes discrimination on the grounds of disability in respect of persons who do not have such visual acuity, since they have binocular vision and a field of vision sufficient for both eyes. Such a requirement for visual acuity is also incompatible with the principle of integration of persons with disabilities and is contrary to the UN Convention on Disabilities.

39 In addition, that court states that, under point 6 of Annex III to Directive 2006/126, group 1 drivers, that is drivers of lighter motor vehicles may be issued a driving licence in 'exceptional cases' even if they do not satisfy the standards relating to the field of vision or visual acuity. However, group 2 drivers, including those applying for a driving licence for the C1 and C1E vehicle categories, who have visual acuity of less than 0,1 for the worse eye cannot be issued with a driving licence. Thus, the right of those drivers to equal treatment before the law is infringed in so far as the directive does not provide for any possibility for an individual medical examination to show that, although the drivers concerned do not satisfy the required standards, road safety is not compromised.

40 In order to answer the question referred by the national court, it is necessary to determine, first of all, whether the EU legislature infringed the right to non-discrimination laid down in Article 21(1) of the Charter when it adopted the threshold for visual acuity in point 6.4 of Annex III to Directive 2006/126. It is also necessary to examine the possible effects on that provision of the UN Convention on Disabilities. Second, it must be determined whether Article 26 of the Charter, which enshrines the principle of integration of persons with disabilities, precludes point 6.4 of Annex III to Directive 2006/126, the validity of which is challenged. Third, it must be determined whether it is contrary to Article 20 of the Charter, according to which everyone is equal before the law, that drivers of certain heavy goods vehicles do not have the opportunity to show, by means of an individual medical examination, that they are fit to drive such vehicles, even in the absence of certain physical capacities required by Directive 2006/126, whereas other drivers of certain other types of vehicles have such a possibility.

The requirement of non-discrimination against persons with disabilities laid down in Article 21 of the Charter

41 It must be determined whether the EU rules at issue in the main proceedings, laying down requirements for visual acuity for the drivers of power-driven vehicles in categories C1 and C1E is contrary to Article 21(1) of the Charter, according to which '[a]ny discrimination based on any ground such as … disability … shall be prohibited'.

42 It should first be noted, first of all, that Article 52(1) of the Charter provides that any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and must respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be imposed only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

43 The principle of equal treatment is a general principle of EU law, enshrined in Article 20 of the Charter, of which the principle of non-discrimination laid down in Article 21(1) of the Charter is a particular expression. According to settled case-law, that principle requires the EU legislature to ensure, in accordance with Article 52(1) of the Charter, 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 (see, to that effect, Case C-550/07 P *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission* EU:C:2010:512, paragraphs 54 and 55 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 concerned (Case C-127/07 *Arcelor Atlantique and Lorraine and Others* EU:C:2008:728, paragraph 47, and Case C-101/12 *Schaible* EU:C:2013:661, paragraph 77).

44 Next, as regards the specific question of discrimination on grounds of disability, the notion of 'disability' is not defined by the Charter itself.

45 In its case-law on equal treatment in the area of employment and occupation, the Court has already held that the definition of 'disability' must be understood, for the purposes of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) read in the light of the UN Convention on Disabilities, as 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 (Joined Cases C-335/11 and C-33711 *HK Danmark* EU:C:2013:222, paragraphs 37 to 39; Case C-312/11 *Commission* v *Italy* EU:C:2013:446, paragraph 56; and Case C-363/12 *Z* EU:C:2014:159, paragraph 76).

46 In those circumstances, it must be held, as far as concerns the issue of discrimination on grounds of disability, that Article 21(1) of the Charter requires the EU legislature, in particular, not to apply any difference in treatment on the basis of a limitation resulting, 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 persons, unless such a difference in treatment is objectively justified.

47 As regards persons like Mr Glatzel, who suffer from a long-term sensory impairment and who have visual acuity of less than 0,1 in the worse eye, it must be observed that those persons do not fulfil the medical requirements in Annex III to Directive 2006/126 and, therefore, cannot be issued with a driving licence, in particular for the vehicle categories C1 and C1E. However, it must be held that while, according to the information in the order for reference, the visual acuity in Mr Glatzel's worse eye is very weak, the fact remains that when he uses both eyes, he has a binocular visual acuity of 1,0, that is, 'full' acuity. In that regard, the Court does not have sufficient information to ascertain whether such impairment constitutes a 'disability' within the meaning of Article 21(1) of the Charter.

48 It is not necessary for the purpose of determining the validity of Directive 2006/126, in the light of Article 21(1) of the Charter, to determine definitively whether, in the case in the main proceedings, Mr Glatzel is considered to have a disability within the meaning of that provision. Even if the state of a person like Mr Glatzel could be considered as falling within the definition of 'disability' within the meaning of the Charter, the difference in treatment consisting in not issuing him with a driving licence for vehicles in categories C1 and C1E on the ground that his visual acuity is insufficient may be objectively justified in the light of overriding considerations of road safety.

49 In that connection, it must be recalled that the Court has already held, as regards the general principle of equal treatment in the context of grounds such as age or sex, that a difference of treatment which is based on a characteristic related to such grounds does not constitute discrimination — that is to say, an infringement of Article 21(1) of the Charter — 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 (see, to that effect, as regards discrimination on grounds of age, Case C-229/08 *Wolf* EU:C:2010:3, paragraph 35, and Case C-447/09 *Prigge and Others* EU:C:2011:573, paragraph 66; and, as regards discrimination based on sex, Case 222/84 *Johnston* EU:C:1986:206, paragraph 40, and Case C-273/97 *Sirdar* EU:C:1999:523, paragraph 25).

50 In the same vein, it must be held, for the purposes of the present case, that a difference in treatment applied to a person according to whether or not he has the visual acuity necessary to drive power-driven vehicles is not, in principle, contrary to the prohibition on discrimination based on disability within the meaning of Article 21(1) of the Charter, in so far as such a requirement actually fulfils an objective of public interest, is necessary and is not a disproportionate burden.

51 In that connection, according to settled case-law, the improvement of road safety is an objective of general interest of the European Union (see, to that effect, inter alia, Case C-55/93 *van Schaik* EU:C:1994:363, paragraph 19; Case C-451/99 *Cura Anlagen* EU:C:2002:195, paragraph 59; Case 54/05 *Commission* v *Finland* EU:C:2007:168, paragraph 40; Case C-110/95 *Commission* v *Italy* EU:C:2009:66, paragraph 60; Case C-384/08 *Attanasio Group* EU:C:2010:133, paragraph 50; Case C-438/08 *Commission* v *Portugal* EU:C:2009:651, paragraph 48; Case C-184/10 *Grasser* EU:C:2011:324, paragraph 26; and Case C-224/10 *Apelt* EU:C:2011:655, paragraph 47). By laying down, in Annex III thereto, a minimum threshold of visual acuity for the worse eye for drivers in group 2, for the purposes of that annex, Directive 2006/126 aims to improve road safety and thus to attain an objective of general interest.

52 As far as concerns judicial review of the requirements of the principle of proportionality relating to the minimum standards for the visual acuity necessary to drive power-driven vehicles, it must be observed that, as regards complex medical assessments such as those at issue in the main proceedings, the EU legislature has a broad discretion and review by the Court is limited to verifying whether there has been a manifest error of assessment or a misuse of powers, or whether the legislature has manifestly exceeded the limits of its discretion (see, to that effect Case C-425/*08 Enviro Tech (Europe)* EU:C:2009:635, paragraph 47; Case C-343/09 *Afton Chemical* EU:C:2010:419, paragraph 28; and Case C-15/10 *Etimine* EU:C:2011:504, paragraph 60).

53 However, the fact remains that, in cases involving such discretion the EU legislature must base its choice on objective criteria (see, Case C-58/08 *Vodafone and Others* EU:C:2010:321, paragraph 53) and it must ensure that fundamental rights are observed (see, to that effect, Joined Cases C-92/09 and C-93/09 *Volker und Markus Schecke and Eifert* EU:C:2010:662, paragraph 46; and Case C-236/09 *Association belge des Consommateurs Test-Achats and Others* EU:C:2011:100, paragraph 17).

54 As regards the necessity of the minimum standards for vision of drivers of power-driven vehicles, it is essential, in order to ensure road safety, that the persons to whom a driving licence is issued possess sufficient physical capabilities, in particular with respect to their vision, in so far as physical defects may have significant consequences (see, by analogy, as regards airline pilots, *Prigge and Others* EU:C:2011:573, paragraph 67). It is well known that vision is essential for the purposes of driving power-driven vehicles and, accordingly, the more that function is reduced, the more it becomes necessary to take into consideration requirements relating to road safety.

55 Although the prohibition on issuing driving licences applied for to persons whose visual acuity has not reached a certain level is necessary and indeed constitutes an effective means of improving road safety by excluding those persons from traffic, the fact remains that such a prohibition must not constitute a disproportionate burden.

56 Thus, in a case such as that in the main proceedings, the principle of proportionality requires, in particular, the principle of equal treatment to be reconciled as far as possible with the requirements of road safety which determine the conditions for driving motor vehicles (see, by analogy, *Johnston* EU:C:1986:206, paragraph 38; *Sirdar* EU:C:1999:523, paragraph 26; and Case C-285/98 *Kreil* EU:C:2000:2, paragraph 23).

57 Therefore, it must be determined whether point 6.4 of Annex III to Directive 2006/126, which lays down the threshold of visual acuity of 0,1 for drivers of motor vehicles in group 2 for the purposes of that annex, is not disproportionate in relation to the objective pursued.

58 It must be recalled that the minimum standards for physical and mental fitness for driving power-driven vehicles in Annex III to Directive 2006/126 were laid down, as is clear from recital 8 in the preamble thereto, on road safety grounds, in accordance with Article 91(1)(c) TFEU.

59 The committee on driving licences, established pursuant to Article 9 of Directive 2006/126, set up a the 'Eyesight' working group which published the report 'New standards for the visual functions of drivers' in May 2005. According to that report, although strict requirements for vision better serve the objective of road safety, those requirements should not be such that they exclude persons from driving power-driven vehicles without good reason, given the fundamental importance, both socially and economically of that activity in modern society.

60 In that report, the experts in the working group, while admitting a lack of research data to determine the minimum values for visual acuity, took the view that, as regards group 2 drivers, for the purposes of Annex III to Directive 2006/126, that is, in particular, drivers of heavy goods vehicles, the minimum value of 0,5 for visual acuity in the worse eye, required by that directive, was no longer justified. However, although they took the view that it is possible to support the argument that driving motor vehicles is a binocular activity and that, accordingly, no requirement concerning monocular visual acuity could be formulated for drivers in group 2, the 'Eyesight' working group concluded that the greater responsibility of group 2 drivers supports the requirement for those drivers to have a 'spare eye' to be able, if necessary, to stop the vehicle they are driving on the side of the road using the worse eye.

61 Following those proposals by the 'Eyesight' working group, the EU legislature amended Annex III to Directive 2006/126, so that the minimum threshold for visual acuity required for the worse eye for group 2 drivers, for the purposes of that annex, was reduced from 0,5 to 0,1. Furthermore, in its report, the 'Eyesight' working group also specifically mentions the effects of amblyopie for the drivers of power-driven vehicles.

62 That being so, it appears that the EU legislature amended that annex in the light of that knowledge and attempted to limit as much as possible any interference with the rights of persons suffering from visual defects.

63 However, it is clear from the order for reference that, for the referring court, even the threshold of 0,1, adopted by Directive 2006/126, appears excessive.

64 As far as concerns the determination of that minimum value relating to visual acuity required by Directive 2006/126, it must be recalled that the EU legislature has a broad discretion as to complex medical questions, such as those relating to the visual acuity necessary to drive power-driven vehicles. In such a context, the European Union judicature cannot substitute its assessment of scientific and technical facts for that of the legislature on which the founding treaties have conferred that task (with regard to the latter, see, inter alia, *Afton Chemical* EU:C:2010:419, paragraph 28).

65 Moreover, the 'Eyesight' working group notes in its report a lack of scientific studies on several aspects of eyesight for drivers of power-driven vehicles. In that connection, according to the case-law of the Court, where there is uncertainty as to the existence or extent of risks to the health of individuals, the EU legislature may take protective measures without having to wait until the reality and the seriousness of those risks become fully apparent (see, to that effect, Case C-180/96 *United Kingdom* v *Commission* EU:C:1998:192, paragraph 99; Case C-192/01 *Commission* v *Denmark* EU:C:2003:492, paragraph 49; and Case C-77/09 *Gowan Comércio Internacional e Serviços* EU:C:2010:803, paragraph 73).

66 Given the close connection between road safety and the protection of the health of road users, where the EU legislature adapts the minimum standards on visual acuity to scientific and technical progress, in accordance with Article 8 of Directive 2006/126, it is open to it, in the provision of scientific uncertainties, to give priority to considerations relating to the improvement of road safety. Thus, the fact that the legislature, concerned not to jeopardise road safety, has decided not to eliminate all minimum requirements for visual acuity of the worse eye for group 2 drivers, for the purposes of Annex III to that directive, cannot make the adaptation measure disproportionate.

67 Finally, the referring court states that the fact that Mr Glatzel has not received the driving licence applied for may constitute discrimination within the meaning of Article 2 of the UN Convention on Disabilities. It is clear, in particular, from the wording of that article, entitled 'Definitions', that discrimination based on disability includes all forms of discrimination including the refusal of reasonable accommodation.

68 In that connection, it must be recalled that the European Union approved the UN Convention on Disabilities by Decision 2010/48. Consequently, the provisions of that convention are, from the time of its entry into force, an integral part of the European Union legal order (see Case 181/73 *Haegeman* EU:C:1974:41, paragraph 5, and *Z* EU:C:2014:159, paragraph 73). Furthermore, it is clear from the appendix to Annex II to Decision 2010/48 that, as regards personal mobility, Directive 2006/126 is one of the legal acts of the European Union which refer to matters governed by that convention.

69 However, as is clear from the case-law of the Court, since the provisions of the UN Convention on Disabilities are subject, in their implementation or their effects, to the adoption of subsequent acts of the contracting parties, the provisions of that convention do not constitute, from the point of view of their content, unconditional and sufficiently precise conditions which allow a review of the validity of the measure of EU law in the light of the provisions of that convention (see, to that effect, *Z* EU:C:2014:159, paragraphs 89 and 90).

70 However, the fact remains that, according to the case-law of the Court, the primacy of international agreements concluded by the European Union over provisions of secondary legislation means that such provisions must, so far as is possible, be interpreted in a manner that is consistent with those agreements (see, inter alia, Case C-61/94 *Commission* v *Germany* EU:C:1996:313, paragraph 52; *HK Danmark* EU:C:2013:222 paragraph 29; and *Z* EU:C:2014:159, paragraph 72).

71 It must be held that point 6.4 of Annex III to Directive 2006/126 provides unequivocally that drivers of motor vehicles in categories C1 and C1E must have minimum visual acuity of 0,1 for the worse eye. In those circumstances, it does not appear possible to give that provision of secondary law an interpretation which would enable it to circumvent the clear rule laying down that minimum value.

72 It follows from all of the foregoing considerations that the EU legislature, by laying down the provision whose validity is challenged, has weighed the requirements of road safety and the right of persons affected by a visual disability to non-discrimination in a manner which cannot be regarded as disproportionate in relation to the objectives pursued.

73 Having regard to all of the foregoing considerations, it must be held that consideration of the question referred does not reveal any information capable of affecting the validity of point 6.4 of Annex III to Directive 2006/126 in the light of Article 21(1) of the Charter.

The integration of persons with disabilities laid down in Article 26 of the Charter

74 It must be recalled, as is clear from Article 52(5) and (7) of the Charter and the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17) concerning Articles 26 and 52(5) of the Charter, that reliance on Article 26 thereof before the court is allowed for the interpretation and review of the legality of legislative acts of the European Union which implement the principle laid down in that article, namely the integration of persons with disabilities.

75 As regards the implementation of that principle by Directive 2006/126, it is clear in particular from the wording of recital 14 in the preamble thereto that '[s]pecific provisions should be adopted to make it easier for physically disabled persons to drive vehicles'. Likewise, Article 5(2) of that directive refers to the conditions for the issue of driving licences to drivers with disabilities, in particular as regards the authorisation to drive adapted vehicles.

76 Thus, in so far as Directive 2006/126 is a legislative act of the European Union implementing the principle contained in Article 26 of the Charter, the latter provision is intended to be applied to the case in the main proceedings.

77 Furthermore, by virtue of the second sentence of Article 51(1) of the Charter, the EU legislature is to observe and promote the application of the principles laid down in it. As regards the principle of the integration of persons with disabilities, Article 26 of the Charter states that the Union is to recognise and respect the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

78 Therefore, although Article 26 of the Charter requires the European Union to respect and recognise the right of persons with disabilities to benefit from integration measures, the principle enshrined by that article does not require the EU legislature to adopt any specific measure. In order for that article to be fully effective, it must be given more specific expression in European Union or national law. Accordingly, that article cannot by itself confer on individuals a subjective right which they may invoke as such (see, to that effect, as regards Article 27 of the Charter, Case C-176/12 *Association de mediation sociale* EU:C:2014:2, paragraphs 45 and 47).

79 Having regard to all of the foregoing considerations, it must be held that the consideration of the question has not revealed any information capable of affecting the validity of Annex III, paragraph 6.4 of Directive 2006/126 in the light of Article 26 of the Charter.

Equality before the law laid down in Article 20 of the Charter

80 The referring court states that, for group 1 drivers under Annex III of Directive 2006/126, who do not satisfy the standards relating, in particular, to visual acuity, the issue of a driving licence may be envisaged in 'exceptional cases', where a driver submits to an individual examination to test his fitness to drive. Thus, the fact that there is no such possibility for group 2 drivers under that annex, may constitute a difference in treatment contrary to Article 20 of the Charter.

81 As stated in paragraph 43 of the present judgment, that article, which is entitled 'Equality before the law' aims to ensure inter alia that comparable situations do not receive different treatment.

82 Therefore, it must be ascertained whether the situation of drivers in group 1 under Annex III of Directive 2006/126 and that of group 2 drivers under the same annex are comparable.

83 In that connection, as the Advocate General observed in point 62 of his Opinion, that the EU legislature took care to create two categories of drivers on the basis of the size of the vehicle, the number of passengers carried and the responsibilities which accordingly result from driving such vehicles. The characteristics of the vehicles concerned, such as the size, weight or manoeuvrability of those vehicles justify the existence of different conditions for the issue of a driving licence in light of the way they are driven. Consequently, the situations of those drivers of such vehicles are not comparable.

84 In so far as those situations are not comparable, a difference in treatment of the situations concerned does not infringe the right of drivers in one or other of the groups to 'equality before the law' in Article 20 of the Charter.

85 Thus, since the situation of drivers in groups 1 and 2 is not comparable, Article 20 of the Charter does not preclude Annex III, paragraph 6 to Directive 2006/126, in so far as that paragraph allows drivers in group 1 to be issued with a driving licence in 'exceptional circumstances', even in the absence of a visual acuity satisfying the requirements laid down by that directive for drivers in that group, but does not allow it for group 2 drivers.

86 Having regard to all of the foregoing considerations, it must be held that consideration of the question does not reveal any information capable of affecting the validity of point 6.4 of Annex III to Directive 2006/126 in the light of Articles 20, 21(1) or 26 of the Charter.

Costs

87 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 (Fifth Chamber) hereby rules:

The examination of the question does not reveal any information capable of affecting the validity of point 6.4 of Annex III to Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences, as amended by Commission Directive 2009/113/EC of 25 August 2009 in the light of Articles 20, 21(1) or 26 of the Charter of Fundamental Rights of the European Union.

[Signatures]