Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

15 July 2021 *

(Reference for a preliminary ruling – Social policy – Equal treatment in employment and occupation – Directive 2000/78/EC – Prohibition of discrimination on grounds of disability – Article 2(2)(a) – Article 4(1) – Article 5 – National legislation laying down auditory acuity requirements for prison officers – Non-compliance with the prescribed minimum standards of sound perception – Absolute bar to continued employment)

In Case C-795/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Riigikohus (Supreme Court, Estonia), made by decision of 24 October 2019, received at the Court on 29 October 2019, in the proceedings

XX

v

Tartu Vangla,

interveners:

Justiitsminister,

Tervise- ja tööminister,

Õiguskantsler,

THE COURT (Second Chamber),

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

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Estonian.

after considering the observations submitted on behalf of:

– XX, by K. Hanni, vandeadvokaat,

– the Õiguskantsler, by O. Koppel,

– the Hellenic Government, by E.-M. Mamouna, A. Magrippi and A. Dimitrakopoulou, acting as Agents,

– the European Commission, by D. Martin and E. Randvere, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 November 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(2) and Article 4(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

2 The request has been made in proceedings between XX and the Tartu Vangla (Tartu Prison, Estonia) following the decision of the governor of that prison to dismiss XX for non-compliance with the auditory acuity requirements for prison officers.

Legal framework

EU law

3 Recitals 16, 18, 20, 21 and 23 of Directive 2000/78 state:

‘(16) The provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability.

…

(18) This Directive does not require, in particular, the armed forces and the police, prison or emergency services to recruit or maintain in employment persons who do not have the required capacity to carry out the range of functions that they may be called upon to perform with regard to the legitimate objective of preserving the operational capacity of those services.

…

(20) Appropriate measures should be provided, i.e. effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources.

(21) To determine whether the measures in question give rise to a disproportionate burden, account should be taken in particular of the financial and other costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance.

…

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

4 Article 1 of that directive, entitled 'Purpose', states that:

'The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.'

5 Article 2 of that directive, entitled '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;

…

5. This Directive shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others.'

6 Article 3 of that directive, entitled 'Scope', reads as follows in paragraph 1 thereof:

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

(a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

…

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

…’

7 Article 4 of Directive 2000/78, entitled ‘Occupational requirements’, provides in paragraph 1 thereof:

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

8 Article 5 of that directive, entitled ‘Reasonable accommodation for disabled persons’, provides:

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

Estonian law

9 Paragraph 146 of the vangistusseadus (Law on detention) provides:

‘(1) The purpose of the medical examination for prison officers is to detect health problems caused by their service, to reduce and prevent health risks and to establish that prison officers have no health problems which prevent them from performing their professional duties.

…

(4) The rules concerning the health requirements and medical examination for prison officers, as well as the requirements relating to the content and format of medical certificates, shall be laid down by a regulation of the Government of the Republic of Estonia.’

10 The Vabariigi Valitsuse määrus nr 12 ‘Vanglateenistuse ametniku tervisenõuded ja tervisekontrolli kord ning tervisetõendi sisu ja vormi nõuded’ (Regulation No 12 of the Government of the Republic of Estonia concerning the health requirements and medical examination for prison officers, as well as the requirements relating to the content and format of medical certificates), of 22 January 2013 (‘Regulation No 12’), adopted on the basis of Paragraph 146(4) of the Law on detention, entered into force on 26 January 2013.

11 Paragraph 3 of that regulation provides:

‘(1) A prison officer’s visual acuity must meet the following requirements:

1. visual acuity with correction must be no less than 0.6 in one eye and no less than 0.4 in the other eye;

2. normal field of vision, normal colour perception and normal night vision.

(2) A prison officer is permitted to wear contact lenses or glasses.’

12 According to Paragraph 4 of that regulation:

‘(1) A prison officer’s level of auditory acuity must be sufficient to communicate by telephone and to hear the sound of an alarm and radio messages.

(2) At the time of the medical examination, a prison officer’s hearing impairment must not exceed 30 dB at frequencies from 500 to 2 000 Hertz, and 40 dB at frequencies from 3 000 to 4 000 Hz, in the ear in which his hearing is better or 40 dB at frequencies from 500 to 2 000 Hz, and 60 dB at frequencies from 3 000 to 4 000 Hz, in the ear in which his hearing is poorer.’

13 Paragraph 5 of that regulation provides:

‘(1) The list of health problems which prevent prison officers from performing their professional duties, a list which must be respected when assessing the state of health of a prison officer, is set out in Annex 1.

(2) The existence of an absolute medical impediment shall prevent a person from entering service as a prison officer or undertaking training in preparation for carrying on the activity of a prison officer. …’

14 Annex 1 to Regulation No 12 contains a list of health problems which prevent prison officers from performing their professional duties. The ‘medical impediments’ include ‘impaired hearing below the prescribed standard’, which is classified as an ‘absolute’ medical impediment.

The main proceedings and the question referred for a preliminary ruling

15 For almost 15 years, the applicant in the main proceedings was employed as a prison officer by Tartu Prison. He worked as a guard on the ‘closed wing’ of that prison from 2 December 2002 and then as a guard on the ‘open wing’ of the prison from 1 June 2008. His employment obligations in the latter position included, inter alia, supervising, as instructed, persons under electronic surveillance by means of a surveillance system, passing on information on those persons, monitoring surveillance and signalling equipment, responding to and communicating information, particularly in the event of alarms, and identifying breaches of the prison’s internal regulations.

16 A medical certificate of 4 April 2017 showed that the standard of sound perception of the applicant in the main proceedings, in his left ear, met the requirements of Regulation No 12, while that in his right ear was from 55 to 75 decibels (dB) for frequencies ranging from 500 to 2 000 Hertz (Hz). According to the applicant in the main proceedings, that hearing impairment had existed since his childhood.

17 By decision of 28 June 2017, the applicant in the main proceedings was dismissed by the Governor of Tartu Prison in accordance with the relevant provisions of Estonian law, including, in particular, Article 5 of that regulation, on the ground that his level of auditory acuity did not meet the minimum standards of sound perception prescribed by that regulation.

18 The applicant in the main proceedings brought before the Tartu Halduskohus (Administrative Court, Tartu, Estonia) an action for a declaration that his dismissal was unlawful and for compensation, arguing that Regulation No 12 constituted discrimination on grounds of disability contrary to the põhiseadus (Constitution) and contrary to national legislation on equal treatment. That action was dismissed by judgment of 14 December 2017, on the ground, inter alia, that the requirement for a minimum standard of sound perception provided for by Regulation No 12 constituted a necessary and justified measure to ensure that serving prison officers are able to carry out all their duties.

19 By judgment of 11 April 2019, the Tartu Ringkonnakohus (Court of Appeal, Tartu, Estonia) upheld the appeal brought by the applicant in the main proceedings, set aside the earlier judgment, declared that the decision to dismiss him was unlawful and ordered Tartu Prison to pay him compensation.

20 That court held that the provisions of Regulation No 12 relating to the auditory acuity requirements were contrary to the general principle of equality enshrined in the Constitution. According to that court, those provisions were also contrary to the principle of protection of legitimate expectations, also enshrined in the Constitution. That court therefore decided to exclude the application of those provisions to the case before it. It also decided to initiate the procedure for reviewing the constitutionality of those provisions before the referring court, the Riigikohus (Supreme Court, Estonia).

21 The referring court explains that the Justiitsminister (Minister for Justice, Estonia) and Tartu Prison argue that Regulation No 12, in particular Annex 1 thereto, is consistent with the Constitution and that the need to guarantee the safety of persons and public order justifies the minimum standards of sound perception laid down by that regulation, as well as the prohibition on the use of a hearing aid to meet those requirements. A prison officer should be capable of performing all the tasks for which he or she was trained and of providing assistance, where necessary, to police officers, with the result that a prison officer's auditory acuity should be sufficient, without the assistance of a hearing aid, to ensure clear and risk-free communication with his or her colleagues in all circumstances.

22 The referring court also notes that the obligation to treat persons who have a disability in the same way as other persons in a comparable situation and without discrimination results not only from the Constitution but also from EU law, in particular from Article 21(1) of the Charter of Fundamental Rights of the European Union and from the provisions of Directive 2000/78.

23 Finally, the referring court states, with reference to the judgment of 13 November 2014, *Vital Pérez* (C-416/13, EU:C:2014:2371, paragraphs 43 to 45), that the concern to ensure the operational capacity and proper functioning of the police, prison or rescue services constitutes a legitimate objective capable of justifying a difference of treatment. It must, however, be ascertained whether the national legislation at issue in the main proceedings laid down a requirement that is proportionate to the objective pursued. However, neither the wording of that directive nor the case-law of the Court allows clear conclusions to be drawn in that regard.

24 In those circumstances, the Riigikohus (Supreme Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Should Article 2(2), read in combination with Article 4(1), of [Directive 2000/78] be interpreted as precluding provisions of national law which provide that impaired hearing below the prescribed standard constitutes an absolute impediment to work as a prison officer and that the use of corrective aids to assess compliance with the requirements is not permitted?'

The question referred for a preliminary ruling

25 By its question, the referring court is asking, in essence, whether Article 2(2) and Article 4(1) of Directive 2000/78 must be interpreted as precluding national legislation which imposes an absolute bar to the continued employment of a prison officer whose auditory acuity does not meet the minimum standards of sound perception prescribed by that legislation and which does not allow the use of corrective aids during the assessment of whether the auditory acuity requirements are met.

26 As a preliminary point, it should be borne in mind that, in accordance with the Court's settled case-law, it is clear from the title of, and preamble to, Directive 2000/78, as well as from its content and purpose, that that directive is intended to establish a general framework for ensuring that everyone benefits from equal treatment 'in matters of employment and occupation' by providing effective protection against discrimination based on any of the grounds listed in Article 1 thereof, which include disability (judgments of 19 September 2018, *Bedi*, C-312/17, EU:C:2018:734, paragraph 28 and the case-law cited, and of 8 October 2020, *Universitatea 'Lucian Blaga' Sibiu and Others*, C-644/19, EU:C:2020:810, paragraph 30).

27 So far as concerns the applicability of that directive, in the light of the information provided by the referring court, which has not been challenged before the Court, Regulation No 12 concerns a prison officer's conditions of recruitment and dismissal, for the purposes of Article 3(1)(a) and (c) of that directive, and therefore falls within the scope of that directive.

28 As regards, in the first place, the question whether national legislation such as that at issue in the main proceedings establishes a difference of treatment based on disability, it should be recalled that, under Article 2(1) of Directive 2000/78, for the purposes of that directive, the 'principle of equal treatment' is to mean that there is to be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1 thereof. Article 2(2)(a) of that directive states that direct discrimination is to be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on grounds of disability.

29 In the present case, under Regulation No 12, in particular Article 4 thereof and Annex 1 thereto, persons having a reduced level of auditory acuity which is below the prescribed minimum standards of sound perception cannot be recruited or continue in employment as prison officers. They are therefore treated less favourably than other persons are, have been or would be treated in a comparable situation, namely other workers employed as prison officers but whose level of auditory acuity meets those standards.

30 It follows that that regulation establishes a difference of treatment based directly on disability, within the meaning of Article 2(2)(a) of Directive 2000/78.

31 As regards, in the second place, the question whether such a difference of treatment is capable of being justified on the basis of Article 4(1) of Directive 2000/78, it should be recalled that, according to the actual wording of that provision, Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 of that directive is not to 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.

32 The Court has held that it is not the ground on which the difference of treatment is based but a characteristic related to that ground which must constitute a genuine and determining occupational requirement (judgment of 15 November 2016, *Salaberria Sorondo*, C-258/15, EU:C:2016:873, paragraph 33 and the case-law cited).

33 In so far as it allows a derogation from the principle of non-discrimination, Article 4(1) of that directive, read in the light of recital 23 thereto, which refers to 'very limited circumstances' in which such a difference of treatment may be justified, must be interpreted strictly (see, to that effect, judgment of 13 September 2011, *Prigge and Others*, C-447/09, EU:C:2011:573, paragraph 72 and the case-law cited).

34 In that regard, it should be noted that recital 18 of Directive 2000/78 specifies that that directive does not require prison services to recruit or maintain in employment persons who do not have the required capacity to carry out the range of functions that they may be called upon to perform with regard to the legitimate objective of preserving the operational capacity of those services.

35 The concern to ensure the operational capacity and proper functioning of those services constitutes a legitimate objective within the meaning of Article 4(1) of that directive (see, by analogy, judgment of 13 November 2014, *Vital Pérez*, C-416/13, EU:C:2014:2371, paragraph 44).

36 Moreover, according to Article 2(5) of Directive 2000/78, that directive is to be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others.

37 As regards the objective pursued by the national legislation at issue in the main proceedings, it is apparent from the order for reference that Regulation No 12, by providing, in Article 4 thereof and Annex 1 thereto, for minimum standards of sound perception, non-compliance with which constitutes an absolute medical impediment to the exercise of the duties of a prison officer, seeks to preserve the safety of persons and public order by ensuring that prison officers are physically capable of performing all the tasks required of them.

38 According to Article 4(1) of that regulation, a prison officer's level of auditory acuity must thus be sufficient to communicate by telephone and to hear the sound of an alarm and radio messages.

39 As the Advocate General noted in point 45 of his Opinion, the requirement to be able to hear properly and thus to reach a certain level of auditory acuity follows from the nature of the duties of prison officers, as described by the referring court. Indeed, the referring court stated that the supervision of prisoners involves, inter alia, being able to detect and react to audible disturbances, to hear alarms being set off, to be able to communicate with other officers by means of communications equipment, in particular in potentially physical altercations or confrontations, in the event that prisoners infringe the prison's internal regulations. The referring court also indicates that any prison officer may be obliged to provide assistance to police officers, to whom the same auditory acuity requirements apply.

40 The Court has already held that the possession of particular physical capacities may be regarded as a 'genuine and determining occupational requirement', within the meaning of Article 4(1) of Directive 2000/78, for the purposes of employment in certain professions, such as firefighter or police officer (see, to that effect, judgments of 12 January 2010, *Wolf*, C-229/08, EU:C:2010:3, paragraph 40; of 13 November 2014, *Vital Pérez*, C-416/13, EU:C:2014:2371, paragraphs 40 and 41; and of 15 November 2016, *Salaberria Sorondo*, C-258/15, EU:C:2016:873, paragraph 36).

41 Therefore, by reason of the nature of a prison officer's duties and of the context in which they are carried out, the fact that his or her auditory acuity must satisfy minimum standards of sound perception laid down by national legislation may be regarded as a 'genuine and determining occupational requirement' within the meaning of Article 4(1) for the purposes of employment as a prison officer.

42 As Regulation No 12 seeks to preserve the safety of persons and public order, it must be held that that regulation pursues legitimate objectives, as is apparent from paragraphs 36 and 37 of this judgment. In those circumstances, it is still necessary to ascertain whether the requirement laid down in Article 4 of that regulation and in Annex 1 thereto – namely that a prison officer's auditory acuity must meet minimum standards of sound perception, without the use of corrective aids being permitted during the assessment of whether those standards are met, and where failure to meet those standards constitutes an absolute medical impediment to the exercise of his or her duties, resulting in their termination and therefore liable to lead to his or her dismissal – is proportionate. Accordingly, it is necessary to examine whether that requirement is appropriate for attaining those objectives and ensure that it does not go beyond what is necessary to attain them (see, to that effect, judgment of 13 November 2014, *Vital Pérez*, C-416/13, EU:C:2014:2371, paragraph 45).

43 As regards, first of all, whether the requirement referred to in the preceding paragraph is appropriate for attaining the objectives pursued by Regulation No 12, namely preserving the safety of persons and public order, it may be accepted that establishing minimum standards of sound perception for the exercise of the duties of a prison officer without the use of hearing aids ensures that the officer will be able to react to the sound of an alarm or to a possible attack and to provide assistance to police officers without the risk of being hindered, as the case may be, by the presence, deterioration or loss of a hearing aid.

44 However, it must be remembered that legislation is appropriate for ensuring attainment of the objective pursued only if it genuinely reflects a concern to attain it in a consistent and systematic manner (judgments of 12 January 2010, *Petersen*, C-341/08, EU:C:2010:4, paragraph 53 and the case-law cited, and of 21 January 2021, *INSS*, C-843/19, EU:C:2021:55, paragraph 32).

45 It is apparent from the information contained in the order for reference that compliance with the minimum standards of sound perception prescribed by Regulation No 12 is assessed without there being, for the prison officer concerned, any possibility of using a hearing aid on that occasion, whereas, when assessing compliance with the standards laid down in that regulation as regards visual acuity, the officer may use corrective devices such as contact lenses or spectacles. However, the wearing, loss or deterioration of contact lenses or spectacles may also hinder the performance of a prison officer's duties and create risks for him or her comparable to those resulting from the use, loss or deterioration of a hearing aid, particularly in the situations of physical confrontation which that officer may encounter.

46 As regards, next, whether that requirement is necessary in order to attain the objectives pursued by Regulation No 12, namely preserving the safety of persons and public order, it should be recalled that non-compliance with the minimum standards of sound perception prescribed by that regulation constitutes an absolute medical impediment to the exercise of the duties of a prison officer. Those standards apply to all prison officers, without the possibility of derogation, regardless of the establishment to which those officers are assigned or the position they hold. Moreover, that regulation does not allow for an individual assessment of a prison officer's ability to perform the essential functions of that occupation notwithstanding any hearing impairment on his or her part.

47 However, as is apparent from paragraphs 15 and 39 of this judgment, the tasks of those officers include the supervising of persons placed under electronic surveillance by means of a surveillance system, as well as monitoring surveillance and signalling equipment, without involving frequent contacts with the prisoners. Furthermore, it is apparent from the order for reference that Regulation No 12 does not take into account the fact that a hearing impairment may be corrected by means of hearing aids which can be miniaturised, sit inside the ear or be placed under headgear.

48 It should be recalled that, under Article 5 of Directive 2000/78, read in the light of recitals 20 and 21 thereof, employers are to take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment unless such measures would impose a disproportionate burden on the employer. Indeed, according to recital 16 of that directive, the provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability. In that regard, the Court has held that the concept of 'reasonable accommodation' should be understood broadly as referring to the elimination of the various barriers that hinder the full and effective participation of persons with disabilities in professional life on an equal basis with other workers. Moreover, recital 20 contains, in that regard, a list of reasonable accommodation measures of a physical, organisational or educational nature, which is not exhaustive (see, to that effect, judgment of 11 April 2013, *HK Danmark*, C-335/11 and C-337/11, EU:C:2013:222, paragraphs 54 and 56).

49 Such an obligation is also enshrined in 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 provisions of which may be relied on

for the purposes of interpreting the provisions of Directive 2000/78, so that the latter must, as far as possible, be interpreted in a manner consistent with the convention (see, to that effect, judgment of 11 September 2019, *Nobel Plastiques Ibérica*, C-397/18, EU:C:2019:703, paragraph 40).

50 In that regard, the Court has held that that directive precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post (see, to that effect, judgment of 11 July 2006, *Chacón Navas*, C-13/05, EU:C:2006:456, paragraph 52).

51 In the present case, as is apparent from the information contained in the order for reference, before being dismissed the applicant in the main proceedings had been employed as a prison officer for more than 14 years to the satisfaction of his immediate superiors. However, it appears from the same information that Regulation No 12 did not allow his employer to conduct, prior to his dismissal, checks in order to ascertain whether it was possible to take appropriate measures, in accordance with Article 5 of Directive 2000/78, such as use of a hearing aid, exemption, for him, from the obligation of performing tasks requiring him to meet the minimum standards of sound perception prescribed, or assignment to a post which does not require those standards to be reached, and no indication is provided as to the possible disproportionate nature of the burden which would be imposed by such measures.

52 Thus, by providing for minimum standards of sound perception, non-compliance with which constitutes an absolute medical impediment to the exercise of the duties of a prison officer, without allowing it to be ascertained whether that officer is capable of fulfilling his or her duties, where appropriate after the adoption of reasonable accommodation measures for the purposes of Article 5 of Directive 2000/78, Regulation No 12 appears to have imposed a requirement which goes beyond what is necessary to attain the objectives pursued by that regulation, which it is for the referring court to ascertain.

53 In the light of the foregoing, the answer to the question referred is that Article 2(2)(a), Article 4(1) and Article 5 of Directive 2000/78 must be interpreted as precluding national legislation which imposes an absolute bar to the continued employment of a prison officer whose auditory acuity does not meet the minimum standards of sound perception prescribed by that legislation, without allowing it to be ascertained whether that officer is capable of fulfilling those duties, where appropriate after the adoption of reasonable accommodation measures for the purposes of Article 5 of that directive.

Costs

54 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 2(2)(a), Article 4(1) and Article 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding national legislation which imposes an

absolute bar to the continued employment of a prison officer whose auditory acuity does not meet the minimum standards of sound perception prescribed by that legislation, without allowing it to be ascertained whether that officer is capable of fulfilling those duties, where appropriate after the adoption of reasonable accommodation measures for the purposes of Article 5 of that directive.

[Signatures]