Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

11 September 2025 *

(Reference for a preliminary ruling – Directive 2000/78/EC – Equal treatment in employment and occupation – Article 2 – Discrimination based on disability – Dismissal of a worker on sick leave – National legislation laying down the same limit of number of days of sick leave per calendar year for all workers in the same sector of activity – Article 5 – Reasonable accommodation)

In Case C-5/24 [Pauni], [i]

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale ordinario di Ravenna (District Court, Ravenna, Italy), made by decision of 4 January 2024, received at the Court on 5 January 2024, in the proceedings

P.M.

v

S. Snc,

THE COURT (First Chamber),

composed of F. Biltgen, President of the Chamber, T. von Danwitz (Rapporteur), Vice-President of the Court, A. Kumin, I. Ziemele and S. Gervasoni, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Italian Government, by G. Palmieri, acting as Agent, and by L. Fiandaca, avvocato dello Stato,

– the Greek Government, by V. Baroutas and M. Tassopoulou, acting as Agents,

– the Netherlands Government, by E.M.M. Besselink and M.K. Bulterman, acting as Agents,

* Language of the case: Italian.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

– the European Commission, by D. Recchia and E. Schmidt, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 April 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation 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 P.M. and S. Snc concerning P.M.'s dismissal on account of the exceedance of the limit of 180 days of sick leave per calendar year laid down by the applicable national legislation.

Legal context

International law

3 Article 27 of the United Nations Convention on the Rights of Persons with Disabilities, concluded in New York on 13 December 2006 and 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'), 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:

…

(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;

(i) ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

…

(k) promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.'

European Union law

4 Recitals 17, 20 and 21 of Directive 2000/78 state:

‘(17) This Directive does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training, without prejudice to the obligation to provide reasonable accommodation for people with disabilities.

…

(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.’

5 In accordance with Article 1 thereof, ‘the purpose of th[at d]irective 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’.

6 Article 2 of that directive, entitled ‘Concept of discrimination’, provides, in paragraphs 1 and 2 thereof:

‘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.’

7 Article 3 of the same directive, entitled 'Scope', provides, in paragraph 1 thereof:

'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:

(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;

…'

8 Article 5 of Directive 2000/78, 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.'

Italian law

The CCNL

9 The Contratto collettivo nazionale di lavoro (CCNL) per i dipendenti da aziende del settore turismo – Confcommercio (National collective agreement for employees of undertakings in the tourism sector – General Confederation of Trade, Tourism and Services) of 20 February 2010 ('the CCNL') provides, in Article 173 thereof, entitled 'Retention of the post':

'1. In case of proven illness or accident, members of staff who are not in a probationary or notice period shall be entitled to remain in post for a period of 180 days per year, namely the period between 1 January and 31 December.

2. If an employee falls ill or is injured more than once in the course of a year, the corresponding periods of absence may be accrued to reach the maximum post retention period referred to in the preceding paragraph.

3. In the case of members of staff hired on a fixed-term basis, post retention shall in any event be limited to the duration of the season or of the appointment.

4. If, on expiry of the period during which post retention is mandatory, the member of staff is unable to return to work due to persistence of the illness, the contract of employment shall be

deemed to have been terminated, with entitlement to full termination pay and all other benefits due, apart from compensation in lieu of notice.'

10 Under Article 174 of the CCNL, entitled 'Unpaid leave':

'1. In the case of workers who are ill and injured at work, retention of the post, fixed at a maximum period of 180 days by Article 173 of this Agreement, shall be extended, at the worker's request, for an additional period not exceeding 120 days, provided that the following conditions are met:

(a) the illness in question is not a chronic and/or mental illness, without prejudice to the provisions of Article 175 of this Agreement (oncological illnesses);

(b) the worker produces medical or hospital admission certificates on a regular basis;

(c) the worker's request in respect of the period exceeding 180 days is for unpaid "general leave" and no rights whatsoever are acquired under the contract;

(d) the worker has not already taken that leave.

2. A worker who intends to take the period of leave referred to in the preceding paragraph must submit a request to that effect to the undertaking by registered letter with acknowledgement of receipt, before the expiry of the 180th day of absence because of illness or accident and sign an express declaration of acceptance of the aforementioned conditions.

3. On expiry of the period of leave, the employer may dismiss the worker in accordance with Article 173; that period shall be included for the purposes of calculating length of service in the event of continuation of the employment relationship.'

11 Article 175 of the CCNL, entitled 'Oncological illnesses', provides:

'1. With respect to patients suffering from serious oncological illnesses certified by a medical committee set up by the local health agency with territorial competence, the period of general leave referred to in Article 174 shall be extended even if it exceeds 120 days.

2. Before the expiry of the 120th day of general leave, the persons concerned must send the undertaking an additional medical certificate attesting to their state of health and their unfitness to return to work and setting out the days of extension granted by the doctor providing the treatment or by the hospital.'

Law No 300

12 Article 5 of legge n. 300 – Norme sulla tutela della libertà e dignità dei lavoratori, della libertà sindacale e dell'attività sindacale, nei luoghi di lavoro e norme sul collocamento (Law No 300 relating to rules on the protection of the freedom and dignity of workers, freedom of association and trade union activity in the workplace, as well as regulations on employment) of 20 May 1970 (GURI No 131 of 27 May 1970) ('Law No 300'), provides:

'Checks by the employer on a worker's fitness and infirmity because of illness or accident are prohibited.

Checks on absences resulting from infirmity may be carried out only by the inspection services of the competent social security institutions, which are required to carry them out when the employer so requests.

…'

The dispute in the main proceedings, the questions referred and the procedure before the Court

13 The undertaking S., which employs nine persons on average, is active in the catering sector. From 1 September 2021, P.M. was recruited by that undertaking on a fixed-term employment contract as a waitress and apprentice chef. Her fixed-term employment contract was converted into an employment contract for an indefinite period with effect from 1 January 2022.

14 P.M. was on sick leave, justified by medical certificates, from 18 June 2022 until 19 December 2022, the date on which her employer dismissed her, on account of the expiry of the maximum post retention period in the event of suspension of an employment contract because of illness, provided for in Article 173 of the CCNL, corresponding to 180 days over the period from 1 January 2022 to 31 December 2022. While the first medical certificate, relating to the period from 18 June until 8 August and drawn up in the Thai language indicated the reason for absence, namely a subarachnoid haemorrhage resulting from a ruptured aneurysm, the subsequent certificates, which were drawn up by an Italian general practitioner and attested to P. M.'s inability to work until 8 January 2023, did not specify the reason for absence, with the result that her employer could not have been aware of it, pursuant to Article 5 of Law No 300.

15 During that sick leave, P.M. applied, on 4 November 2022, for administrative recognition of her disability, without informing her employer. It is apparent from the order for reference that, on 17 February 2023, P.M. obtained the legal status of disabled person and that her illness continued several months after her dismissal, such that a return to work seemed unlikely.

16 On 16 October 2023, P.M. brought an action before the Tribunale ordinario di Ravenna (District Court, Ravenna, Italy), which is the referring court, claiming that her dismissal was discriminatory. She states that Article 173 of the CCNL, which provides for a maximum post retention period, does not take account of the worker's disability. Consequently, she seeks reinstatement or, failing that, payment of 15 months of salary, and compensation corresponding to the months of unpaid salary from the date of her dismissal until the judgment to be given, in addition to the payment of unpaid social security contributions during that period, as well as compensation in the amount of EUR 10 000 for the non-material damage resulting from the alleged discrimination and reimbursement of legal costs.

17 The referring court indicates that, under the CCNL, a worker on sick leave is entitled to retain his or her post for a period of 180 days per calendar year, during which he or she is paid by the National Social Security Institute (INPS) and by his or her employer, the latter covering approximately two months of salary. At the end of that period, that worker may apply, in accordance with Article 174 of the CCNL, for a one-off and unpaid additional period of leave of 120 days, except in the event of chronic and/or psychological illness. In the event of oncological disease, the 120-day limit may be lifted, pursuant to Article 175 of the CCNL.

18 In the light of recital 17 of Directive 2000/78 and the judgments of 11 April 2013, *HK Danmark* (C-335/11 and C-337/11, EU:C:2013:222), and of 18 January 2018, *Ruiz Conejero* (C-270/16, EU:C:2018:17), the referring court asks, in particular, whether the national legislation at issue in the main proceedings is capable of giving rise to indirect discrimination, in so far as it provides for the same treatment applicable to all workers on sick leave, whether or not they have a disability. The referring court observes, however, that that legislation protects those workers over a very long period and appears to have been designed, from the outset, to cover absences linked to disability. Consequently, there is doubt as to its discriminatory nature.

19 In so far as a difference of treatment may be found, the referring court tends to take the view that the legislation concerned makes it possible to protect, first, a worker on sick leave, who is being retained in his or her post, together with his or her remuneration, for a six-month period per year and, second, the employer, who is authorised to terminate an employment relationship which has become both permanently and objectively unprofitable, that is to say, after the expiry of that 180-day period. With regard to the additional unpaid leave of 120 days, provided for in Article 174 of the CCNL, the referring court considers it potentially discriminatory, in so far as it is not available to workers with chronic and/or psychological illnesses, in view of the long-term nature of such illnesses. However, in the present case, P.M. did not request the benefit of that additional leave, such that the question whether that article constitutes discrimination is not relevant for the purposes of resolving the dispute in the main proceedings.

20 Lastly, the referring court states that the legislation at issue in the main proceedings also protects the private life of the worker, who is not required to disclose to the employer either his or her state of disability or the medical diagnosis justifying his or her sick leave. An employer who dismisses the worker on sick leave upon expiry of the period of 180 paid days provided for in Article 173 of the CCNL – increased, where appropriate, by 120 days corresponding to the additional unpaid leave – thus acts without being aware, in principle, of the reason for the sick leave or the possible existence of that worker's disability.

21 In those circumstances, the Tribunale ordinario di Ravenna (District Court, Ravenna) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does Directive 2000/78 preclude national legislation which, by providing for the right to retain the post in the event of illness for 180 paid days, in the period from 1 January to 31 December of each year, in addition to a further 120 days of unpaid leave (which can be taken only once) at the worker's request, does not provide for different rules between workers who can be classified as disabled and workers who cannot?

(2) If the national legislation [at issue in the main proceedings] were to be regarded in the abstract as constituting indirect discrimination, is the legislation itself nevertheless objectively justified by a legitimate aim and are the means of achieving that aim appropriate and necessary?

(3) Can the provision of unpaid leave, at the worker's request, following the end of the 120 days of sick leave, which is capable of preventing dismissal until its expiry amount to suitable and sufficient reasonable accommodation for avoiding discrimination?

(4) Can an accommodation consisting of the employer's duty to grant – on the expiry of the period of 180 days of paid sick leave – a further period fully paid by it, without obtaining consideration for work, be regarded as reasonable?

(5) For the purposes of assessing the discriminatory conduct of the employer, can (for the purposes of establishing the lawfulness or otherwise of the dismissal) the fact that even a possible further period of stability in the relationship paid for by the employer would not have enabled the disabled person to return to work, given his or her continuing illness, be taken into account?'

22 The referring court has also requested the Court to determine the present case pursuant to the expedited procedure provided for in Article 105(1) of the Rules of Procedure of the Court. By order of 9 April 2024, *S. Snc* (C-5/24, EU:C:2024:315), the President of the Court decided to reject that request.

23 In response to a request for clarification from the Court, addressed to the referring court pursuant to Article 101(1) of the Rules of Procedure, the referring court stated that the third question contained a clerical error and should have referred to the expiry of the period of 180 days of sick leave provided for in Article 173 of the CCNL, to which may be added an additional, unpaid post retention period of 120 days, pursuant to Article 174 of the CCNL.

Consideration of the questions referred

The first and second questions

24 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 2(2) and Article 5 of Directive 2000/78 must be interpreted as precluding national legislation which confers on a worker on sick leave a right to retain his or her post for a paid and renewable period of 180 days per calendar year, in addition to, in certain cases and at the request of that worker, an unpaid and non-renewable period of 120 days, without providing for specific rules for workers with disabilities.

25 As regards the applicability of Directive 2000/78, it should be recalled, first, that the concept of 'disability' within the meaning of that directive has to be understood as referring to a limitation that results in particular from long-term physical, mental or psychological impairments, which, in interaction with various barriers, may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers (see, to that effect, judgment of 18 January 2024, *Ca Na Negreta*, C-631/22, EU:C:2024:53, paragraph 34 and the case-law cited).

26 Second, according to Article 3(1)(c) thereof, that directive applies to all persons, as regards both the public and private sectors, including public bodies, in relation to, inter alia, conditions for dismissals. In that regard, it must be recalled that, according to the case-law, the concept of 'dismissal' covers, inter alia, the unilateral termination of any activity referred to in Article 3(1)(a) of that directive. Therefore, that concept must be interpreted as encompassing any termination of an employment contract not sought by the worker, and therefore without his or her consent (judgment of 18 January 2024, *Ca Na Negreta*, C-631/22, EU:C:2024:53, paragraphs 35 and 36 and the case-law cited).

27 In the present case, although the national legislation at issue in the main proceedings appears to relate to the conditions of dismissal, within the meaning of Directive 2000/78, it is, however, for the referring court to ascertain whether the illness of the applicant in the main proceedings does indeed fall within the concept of 'disability', in the light of the case-law referred to in paragraph 25 of the present judgment.

28 In that regard, it must be stated that the fact that the person concerned is recognised as having a disability within the meaning of national law does not necessarily indicate that he or she has a disability within the meaning of Directive 2000/78 (see, to that effect, judgment of 18 January 2018, *Ruiz Conejero*, C-270/16, EU:C:2018:17, paragraph 32).

29 That said, if a curable or incurable illness entails a limitation of the person's capacity, within the meaning of the case-law referred to in paragraph 25 of the present judgment, and the limitation is a long-term one, such an illness can be covered by the concept of 'disability' within the meaning of that directive (see, to that effect, judgment of 11 April 2013, *HK Danmark*, C-335/11 and C-337/11, EU:C:2013:222, paragraph 41).

30 In that regard, the long-term nature of such a limitation must be assessed in relation to the condition of incapacity, as such, of the person concerned at the time of the alleged discriminatory act adopted against him or her. The evidence which makes it possible to find that a limitation of capacity is long term includes the fact that, at the time of the allegedly discriminatory act, the incapacity of the person concerned did not display a clearly defined prognosis as regards short-term progress or the fact that that incapacity was likely to be significantly prolonged before that person had recovered (see, to that effect, judgment of 11 September 2019, *Nobel Plastiques Ibérica*, C-397/18, EU:C:2019:703, paragraphs 44 and 45).

31 Thus, a situation such as that at issue in the main proceedings may fall within the scope of Directive 2000/78, in the light of the case-law referred to in paragraphs 28 to 30 of the present judgment.

32 In order to answer the first and second questions, it should be recalled, first, that Directive 2000/78 is a specific expression, within the field that it covers, of the general prohibition of discrimination laid down in Article 21 of the Charter of Fundamental Rights of the European Union ('the Charter'), which prohibits any discrimination based, inter alia, on disability. Moreover, Article 26 of the Charter provides that the European Union is to recognise and respect the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community (judgment of 18 January 2024, *Ca Na Negreta*, C-631/22, EU:C:2024:53, paragraph 40 and the case-law cited).

33 Next, it should be stated that the provisions of the UN Convention may be relied on for the purposes of interpreting those of Directive 2000/78, with the result that the latter must, as far as possible, be interpreted in a manner that is consistent with that convention (judgment of 18 January 2024, *Ca Na Negreta*, C-631/22, EU:C:2024:53, paragraph 41 and the case-law cited).

34 In that context, it should be recalled that unfavourable treatment on grounds of disability does not undermine the protection provided for by Directive 2000/78 unless it constitutes discrimination within the meaning of Article 2 of that directive. A worker with a disability covered by that directive must be protected against all discrimination in relation to a worker without a disability. It is therefore necessary to examine whether national legislation such that at issue in the main

proceedings is liable to produce discrimination against persons with disabilities (see, to that effect, judgment of 18 January 2018, *Ruiz Conejero*, C-270/16, EU:C:2018:17, paragraph 36 and the case-law cited).

35 Under Article 2(2)(a) of Directive 2000/78, 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 any of the grounds referred to in Article 1 of that directive, which include disability.

36 According to settled case-law, it cannot be held that a provision or practice establishes a difference in treatment directly based on disability, for the purposes of the combined provisions of Article 1 and Article 2(2)(a) of that directive, where it is based on a criterion that is not inextricably linked to disability (see, to that effect, judgment of 26 January 2021, *Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie*, C-16/19, EU:C:2021:64, paragraph 44 and the case-law cited).

37 In the present case, as the Advocate General observed in point 43 of his Opinion, the national legislation at issue in the main proceedings applies in the same way to all workers, whether or not they have a disability. Such legislation cannot be regarded as establishing a difference in treatment directly based on disability, for the purposes of Article 2(2)(a) of Directive 2000/78.

38 Under Article 2(2)(b) of that directive, indirect discrimination is to 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 that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or, as regards persons with a particular disability, the employer or any person or organisation to whom that directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 of the same directive in order to eliminate disadvantages entailed by such provision, criterion or practice.

39 Moreover, under that Article 5, in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation is to be provided, which means that 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, or to undergo training, unless such measures would impose a disproportionate burden on the employer. That article states that that burden is not to be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.

40 In the present case, it is therefore for the referring court to assess whether the national legislation at issue in the main proceedings – and, in particular, Article 173 of the CCNL, which applies uniformly to all workers concerned without taking into account any disability – is liable to put workers with disabilities at a particular disadvantage.

41 In that regard, it follows neither from the words ‘particular disadvantage’ used in Article 2(2)(b) of Directive 2000/78 nor from the other detail contained in that provision that such a disadvantage would exist only where there is a serious, obvious and particularly significant case of inequality. That concept must be understood as meaning that it is particularly persons protected by that directive, which include workers with disabilities, because of the provision, criterion or practice in

question, who are disadvantaged (see, by analogy, judgments of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480, paragraphs 99 and 100, and of 15 November 2018, *Maniero*, C-457/17, EU:C:2018:912, paragraph 47 and the case-law cited).

42 Accordingly, the existence of such a particular disadvantage could be established, for example, if it were proved that that provision, criterion or practice is to the disadvantage of a significantly greater proportion of workers with disabilities as compared with those without disabilities. It is for the referring court to determine whether that is the case in the case in the main proceedings (see, by analogy, judgments of 24 February 2022, *TGSS (Domestic worker unemployment)*, C-389/20, EU:C:2022:120, paragraph 41 and the case-law cited, and of 19 December 2024, *Loredas*, C-531/23, EU:C:2024:1050, paragraph 53).

43 In the present case, it seems that a worker with a disability is, in principle, more exposed to the risk of Article 173 of the CCNL being applied to him or her than a worker who is without a disability. Compared to such a worker, a worker with a disability is exposed to a greater risk of injury or, more generally, of being absent by reason of health problems, on account of his or her disability or an illness connected with his or her disability. Such a worker thus runs a greater risk of accumulating days of absence on health grounds and, consequently, of reaching the limit of 180 paid days provided for in that article. It is thus apparent that the rule provided for in that article is liable to place disabled workers at a disadvantage and so to bring about a difference of treatment indirectly based on disability within the meaning of Article 2(2)(b) of Directive 2000/78 (see, by analogy, judgment of 18 January 2018, *Ruiz Conejero*, C-270/16, EU:C:2018:17, paragraph 39).

44 In the first place, in accordance with Article 2(2)(b)(i) of Directive 2000/78, it is necessary to establish whether the difference in treatment between workers with disabilities and workers without disabilities, liable to result from the national legislation at issue in the main proceedings, is objectively justified by a legitimate aim, whether the measures implemented to achieve that aim are appropriate and whether they do not go beyond what is necessary to achieve it (judgment of 18 January 2018, *Ruiz Conejero*, C-270/16, EU:C:2018:17, paragraph 40).

45 According to settled case-law, the Member States have broad discretion not only in choosing to pursue a particular aim in the field of social and employment policy but also in defining measures to implement it (judgments of 19 July 2017, *Abercrombie & Fitch Italia*, C-143/16, EU:C:2017:566, paragraph 31, and of 18 January 2018, *Ruiz Conejero*, C-270/16, EU:C:2018:17, paragraph 43 and the case-law cited).

46 In the present case, as the Advocate General observed, in essence, in point 49 of his Opinion, it is apparent from recital 17 of Directive 2000/78 that that directive does not require the maintenance in employment of a person who is no longer capable or available to perform the essential functions of the post concerned, without prejudice to the obligation to provide reasonable accommodation for people with disabilities. In such a context, ensuring the ability and availability of workers to carry out their professional activity may constitute a legitimate aim of social policy.

47 However, it is necessary to establish, as is mentioned in paragraph 44 of the present judgment, whether the measures implemented by the national legislation at issue to achieve that aim are appropriate and do not go beyond what is necessary to achieve it.

48 As regards the appropriateness of the national legislation at issue in the main proceedings, it should be noted that it authorises an employer to terminate an employment relationship which has become unprofitable, while protecting workers on sick leave, including those with disabilities, by maintaining them in employment for a maximum period of 180 days per calendar year, in addition to, in certain cases and at the worker's request, a period of 120 days, albeit unpaid and non-renewable. Such legislation appears, on that basis, to be appropriate for the purpose of achieving the legitimate aim referred to in paragraph 46 of the present judgment.

49 As regards the necessity of such legislation, it must be placed in its context and the adverse effects it is liable to cause for the persons concerned must be considered. Thus, it is for the national court to examine whether account has been taken of relevant factors relating, in particular, to workers with disabilities (see, to that effect, judgment of 18 January 2018, *Ruiz Conejero*, C-270/16, EU:C:2018:17, paragraphs 49 and 50).

50 The risks run by persons with disabilities, who generally face greater difficulties than persons without disabilities in re-entering the labour market, and have specific needs in connection with the protection their condition requires, should not be overlooked (see, to that effect, judgment of 18 January 2018, *Ruiz Conejero*, C-270/16, EU:C:2018:17, paragraph 51).

51 Finally, the national court seised must also ascertain whether the national legal system contains specific provisions aimed at specifically protecting persons with disabilities and which are capable of preventing and compensating for disadvantages caused by disability, including the possibility of suffering illnesses linked to disability (see, to that effect, judgment of 18 January 2018, *Ruiz Conejero*, C-270/16, EU:C:2018:17, paragraph 55).

52 In the present case, although the order for reference does not refer to specific provisions, in the national legal system, which are intended to protect workers with disabilities and which are capable of preventing and compensating for the disadvantages caused by disability, it is nevertheless apparent from the information provided by the referring court, summarised in paragraph 18 of the present judgment, that the national legislation at issue in the main proceedings was designed, from the outset, to protect workers, inter alia, against absences due to a disability. The authors of that legislation therefore, it seems, took into account relevant factors relating, in particular, to workers with disabilities, within the meaning of the case-law referred to in paragraph 49 of the present judgment, even though that legislation does not provide for specific rules for those workers.

53 In any event, it is for the referring court to ascertain whether the measures provided for by the national legislation at issue in the main proceedings go beyond what is necessary to achieve the legitimate aim referred to in paragraph 46 of the present judgment, taking into account, inter alia, the context of that legislation and the specific provisions intended to protect persons with disabilities.

54 In the second place, under Article 2(2)(b)(ii) of Directive 2000/78, it is necessary to examine whether the national legislation at issue in the main proceedings requires the employer concerned to provide reasonable accommodation, within the meaning of Article 5 of that directive.

55 Although, as is apparent from its recital 17, that directive does not require a person who is no longer capable of performing the essential functions of the post concerned to remain employed, the fact remains that the employer is required to provide reasonable accommodation for persons with disabilities.

56 As regards such accommodation, it follows from the wording of Article 5 of Directive 2000/78, read in the light of recitals 20 and 21 thereof, that the employer is required to take appropriate measures, that is to say effective and practical measures, taking each individual situation into account, 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 (judgment of 18 January 2024, *Ca Na Negreta*, C-631/22, EU:C:2024:53, paragraph 43 and the case-law cited).

57 In that regard, it should be recalled that the Court has held that Article 5 of Directive 2000/78 precludes national legislation which provides that an employer may terminate the employment contract on the ground that the worker is permanently unable to perform the tasks entrusted to him or her under that contract, on account of a disability occurring during the employment relationship, without the employer first being required to make or maintain reasonable accommodation in order to enable that worker to keep his or her job, or to demonstrate, where appropriate, that such accommodation would constitute a disproportionate burden (judgment of 18 January 2024, *Ca Na Negreta*, C-631/22, EU:C:2024:53, paragraph 53).

58 In the present case, it appears that the national legislation at issue in the main proceedings does not expressly require an employer to provide reasonable accommodation before dismissing a disabled worker who has reached the limit of 180 days of sick leave per calendar year laid down in Article 173 of the CCNL.

59 It is true, as is apparent from the information provided by the referring court, that the employer cannot, in principle, be aware of the reason for the worker's prolonged absence and therefore cannot, in principle, be aware of the existence of his or her disability, unless the worker has informed the employer of his or her own motion.

60 However, it seems that, even assuming that the worker in question has taken steps to inform his or her employer of the existence of his or her disability upon expiry of the 180-day period provided for in Article 173 of the CCNL, that employer is authorised to proceed with the dismissal, without being obliged to provide reasonable accommodation or to demonstrate that such accommodation would constitute a disproportionate burden on it.

61 If that were the scope of the national legislation at issue in the main proceedings, such a situation would be liable to undermine the effectiveness of Article 5 of Directive 2000/78, read in the light of Article 27(1) of the UN Convention, in accordance with which the realisation of the right to work must be safeguarded and promoted, including for those who acquire a disability during the course of employment, as well as job retention. Furthermore, that situation would also undermine the objective of occupational integration of persons with disabilities, which is set out in Article 26 of the Charter (see, by analogy, judgment of 18 January 2024, *Ca Na Negreta*, C-631/22, EU:C:2024:53, paragraph 50).

62 It is, however, for the referring court to assess whether that is the case in the light of all the relevant national provisions, including those transposing Article 5 of Directive 2000/78.

63 In the light of all the foregoing considerations, the answer to the first and second questions is that Article 2(2) and Article 5 of Directive 2000/78 must be interpreted as not precluding national legislation which confers on a worker on sick leave a right to retain his or her post for a paid and renewable period of 180 days per calendar year, in addition to, in certain cases and at the request of that worker, an unpaid and non-renewable period of 120 days, without providing for specific rules for workers with disabilities, provided that:

– that national legislation does not go beyond what is necessary to achieve the social policy aim of ensuring the ability and availability of the worker to carry out his or her professional activity, and that

– that national legislation does not prevent full compliance with the requirements laid down in that Article 5.

The third question

64 By its third question, the referring court asks, in essence, whether Article 5 of Directive 2000/78 must be interpreted as meaning that a national provision which provides, for the benefit of a worker on sick leave but without regard to his or her possible disability, for an unpaid post retention period of 120 days, in addition to a paid post retention period of 180 days, constitutes 'reasonable accommodation' within the meaning of that article.

65 The wording of that Article 5 expressly refers, in its second sentence, to appropriate measures taken by an employer, 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.

66 In the present case, it must be held, first, that Article 174 of the CCNL is an integral part of the national legislation at issue in the main proceedings, and second, that it confers a right on workers on sick leave, without their possible disabilities being taken into account. That article therefore does not constitute a measure taken by an employer for the benefit of a person with a disability and, in the light of the wording of Article 5 of that directive, cannot therefore constitute 'reasonable accommodation' within the meaning of that article.

67 Consequently, the answer to the third question is that Article 5 of Directive 2000/78 must be interpreted as meaning that a national provision providing, for the benefit of a worker on sick leave but without regard to his or her possible disability, for an unpaid post retention period of 120 days, in addition to a paid post retention period of 180 days, does not constitute 'reasonable accommodation' within the meaning of that article.

The fourth and fifth questions

68 By its fourth and fifth questions, the referring court asks, in essence, whether Article 5 of Directive 2000/78 must be interpreted as meaning that an additional period of paid leave, which would be entirely at the employer's expense and which would be additional to the post retention periods provided for by national law, may be regarded as 'reasonable accommodation' within the meaning of that article.

69 In that regard, it is apparent from the information provided by the referring court, first, that the national legislation at issue does not provide for an additional period of paid leave other than that provided for in Article 173 of the CCNL and, second, that the employer at issue in the main proceedings did not offer the applicant in the main proceedings the benefit of such an additional period of paid leave since it dismissed her immediately at the end of the 180-day period referred to in Article 173. Nor is it apparent from the order for reference that the applicant in the main proceedings requested such additional paid leave. Moreover, the referring court itself acknowledges that that is a theoretical possibility. Consequently, the fourth and fifth questions are hypothetical and therefore irrelevant for the purposes of resolving the dispute in the main proceedings.

70 According to settled case-law, the Court may refuse to rule on a question referred by a national court in particular where the problem is hypothetical. The justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute (see, to that effect, judgments of 17 October 2024, *Karl und Georg Anwander Güterverwaltung*, C-239/23, EU:C:2024:888, paragraph 82, and of 3 April 2025, *Swiftair*, C-701/23, EU:C:2025:237, paragraph 21 and the case-law cited).

71 It follows that the fourth and fifth questions are inadmissible.

Costs

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

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

1. **Article 2(2) and Article 5 of Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as not precluding national legislation which confers on a worker on sick leave a right to retain his or her post for a paid and renewable period of 180 days per calendar year, in addition to, in certain cases and at the request of that worker, an unpaid and non-renewable period of 120 days, without providing for specific rules for workers with disabilities, provided that:**

   – **that national legislation does not go beyond what is necessary to achieve the social policy aim of ensuring the ability and availability of the worker to carry out his or her professional activity, and that**

   – **that national legislation does not prevent full compliance with the requirements laid down in that Article 5.**

2. **Article 5 of Directive 2000/78 must be interpreted as meaning that a national provision providing, for the benefit of a worker on sick leave but without regard to his or her possible disability, for an unpaid post retention period of 120 days, in addition to a paid post retention period of 180 days, does not constitute 'reasonable accommodation' within the meaning of that article.**

[Signatures]