Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

11 September 2025 *

(Reference for a preliminary ruling – Social policy – United Nations Convention on the Rights of Persons with Disabilities – Articles 2, 5 and 7 – Articles 21, 24 and 26 of the Charter of Fundamental Rights of the European Union – Directive 2000/78/EC – Equal treatment in employment and occupation – Article 1 – Article 2(1) and (2)(b) – Prohibition of discrimination on grounds of disability – Indirect discrimination – Difference of treatment in respect of an employee who does not himself or herself have a disability but cares for his or her child who has a disability – Article 5 – Employer's obligation to make reasonable accommodation)

In Case C-38/24 [Bervidi], [i]

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Supreme Court of Cassation, Italy), made by decision of 17 January 2024, received at the Court on 19 January 2024, in the proceedings

G.L.

v

AB SpA,

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:

– G.L., by F. Andretta and M. Parpaglioni, avvocati,

– AB SpA, by D. La Rosa, avvocata,

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

after hearing the Opinion of the Advocate General at the sitting on 13 March 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), read in the light 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').

2 The request has been made in proceedings between G.L. and AB SpA concerning that company's refusal to grant G.L. an accommodation to her working conditions to enable her to care for her son who has a disability.

Legal context

International law

3 Recital (x) in the preamble to the UN Convention states:

'*Convinced* that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities'.

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 in its third and fourth paragraphs:

‘For the purposes of the present 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;

“Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms’.

6 Article 5 of the UN Convention, entitled ‘Equality and non-discrimination’, provides:

‘1. States Parties recognize 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.’

7 Article 7 of that convention entitled ‘Children with disabilities’, provides, in paragraphs 1 and 2 thereof:

‘1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.’

8 Article 34(1) of that convention provides that a Committee on the Rights of Persons with Disabilities is to be established.

European Union law

Directive 2000/43/EC

9 Article 1 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22) states:

'The purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment.'

10 Article 2(1) and (2) of that directive provides:

'1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.

2. For the purposes of paragraph 1:

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

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

Directive 2000/78

11 Recitals 6, 12, 20, 21 and 37 of Directive 2000/78 state:

'(6) The Community Charter of the Fundamental Social Rights of Workers [adopted at the European Council meeting held in Strasbourg on 9 December 1989] recognises the importance of combating every form of discrimination, including the need to take appropriate action for the social and economic integration of elderly and disabled people.

…

(12) To this end, any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the [European] Community. …

…

(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.

…

(37) In accordance with the principle of subsidiarity set out in Article 5 of the EC Treaty, the objective of this Directive, namely the creation within the Community of a level playing-field as regards equality in employment and occupation, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the action, be better achieved at Community level. …'

12 Under Article 1 of that directive, the purpose of the 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.'

13 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.'

14 Article 3 of that directive, entitled 'Scope', provides, in paragraph 1(a) and (c) 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 …

…

(c) employment and working conditions …'

15 Article 5 of Directive 2000/78, entitled 'Reasonable accommodation for disabled persons', is worded as follows:

'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

16 Article 2(1) of decreto legislativo n. 216 – Attuazione della direttiva 2000/78/CE per la parità di trattamento in materia di occupazione e di condizioni di lavoro (Legislative Decree No 216 implementing Directive 2000/78/EC for equal treatment in employment and occupation) of 9 July 2003 (GURI No 187 of 13 August 2003), in the version applicable to the dispute in the main proceedings, provides:

'For the purposes of this Decree …, the "principle of equal treatment" means that there shall be no direct or indirect discrimination whatsoever on the grounds of religion, belief, disability, age or sexual orientation. This principle means that direct or indirect discrimination, as defined below, shall be prohibited:

(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 the grounds of religion, belief, disability, age or sexual orientation.

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

17 Article 3(3-*bis*) of that legislative decree is worded as follows:

'In order to guarantee compliance with the principle of equal treatment of persons with disabilities, public and private employers are required to make reasonable accommodation, as defined by the [UN Convention], ratified under Law No 18 of 3 March 2009, in the workplace to ensure that persons with disabilities are fully equal with other workers. Public employers must make provision for the implementation of this subparagraph without introducing or increasing burdens on public finance, using the human, financial and operational resources available under current legislation.'

18 Article 25(2-*bis*) of decreto legislativo n. 198 – Codice delle pari opportunità tra uomo e donna, a norma dell'articolo 6 della legge 28 novembre 2005, n. 246 (Legislative Decree No 198 on the code on equal opportunities between men and women, in accordance with Article 6 of the Law of

28 November 2005, No 246) of 11 April 2006 (GURI No 125 of 31 May 2006, Ordinary Supplement No 133), which came into force after the facts of the dispute in the main proceedings, provides:

'Discrimination within the meaning of this Title means any treatment or alteration in the organisation of working conditions or working time which, because of sex, age, personal or family care needs, pregnancy, maternity or paternity, including adoptive maternity or paternity, or on the grounds of entitlement to or exercise of related rights, places or may place the worker in at least one of the following situations:

(a) at a disadvantage compared with all other workers;

(b) in a situation which limits opportunities for participation in the life and the decision-making of the undertaking;

(c) in a situation which limits access to promotion and career progression mechanisms.'

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

19 G.L. worked for the company AB, established in Italy, as a 'station operator'. In that role, she was responsible for monitoring and supervising an underground station.

20 G.L. repeatedly asked AB to appoint her permanently to a position with fixed working hours, requiring, as the case may be, a lower level of qualification, to enable her to care for her minor child with extensive and comprehensive needs arising from disability, who lives with her and must follow a care programme at a fixed time in the afternoon.

21 AB did not grant her requests but did, however, provide G.L. with some accommodation in respect of her working conditions on a provisional basis, which comprised assigning her a fixed workplace and a preferential working schedule as compared to other station operators, who are subject to alternating and rotating shifts.

22 On 5 March 2019, G.L. brought an action before the Tribunale di Roma (District Court, Rome, Italy) against AB seeking a declaration that her employer's refusal to grant her request for accommodation in respect of her working conditions on a permanent basis was discriminatory.

23 In her action, G.L. requested that that company be ordered to assign her permanently to a morning shift with fixed working hours (08:30 to 15:00) and to adopt a plan to eliminate the discrimination to which she was subject and to pay her compensation for the harm she has suffered.

24 The Tribunale di Roma (District Court, Rome) dismissed G.L.'s action, and G.L. brought an appeal against that judgment before the Corte d'appello di Roma (Court of Appeal, Rome, Italy). The latter jurisdiction also dismissed the action on the merits, finding that the alleged discriminatory conduct had not been established and that AB had, in any case, provided 'reasonable accommodation' to take into account the constraints on G.L., even though those measures were provisional.

25 G.L. brought an appeal on a point of law before the Corte suprema di cassazione (Supreme Court of Cassation, Italy), which is the referring court.

26 In October 2022, AB dismissed G.L.

27 The referring court considers that the case in the main proceedings raises the question as to whether an employee who cares for his or her minor child who has a disability is entitled to bring a case for protection against indirect discrimination on grounds of disability, from which a person who has a disability benefits, in view of the principles arising from the judgment of 17 July 2008, *Coleman*, (C-303/06, EU:C:2008:415).

28 It notes that, in that judgment, the Court held that the scope *ratione personae* of the protection against direct discrimination on grounds of disability, provided for by that directive, extends to an employee who does not himself or herself have a disability but cares for a child who has a disability, for whom that employee is the primary provider of the care required by virtue of the child's condition.

29 The referring court states that G.L. must be found to be a 'family caregiver' for the purposes of national law, and that she may benefit, on that basis, from tax and social advantages provided for by Italian law, such as the right to choose, in so far as is possible, the workplace closest to her home. However, no provision of Italian law conferred on such a caregiver, at the time of the facts in the main proceedings, protection against discrimination in the workplace because of the assistance that he or she must provide to his or her child who has a disability.

30 The referring court explains that it was for that reason that the court at first instance dismissed G. L.'s action, finding that she was not entitled to bring an action challenging the discrimination which she had allegedly faced. The court hearing the appeal, on the basis of the principles arising from the judgment of 17 July 2008, *Coleman* (C-303/06, EU:C:2008:415), held that a family caregiver, such as G.L., was entitled to rely on the national provisions protecting persons with disabilities against discrimination at work.

31 However, the referring court takes the view that it is not clearly apparent from that judgment that the principles arising from it may be applied to a situation in which there is indirect discrimination as regards an employee who is considered to be a 'family caregiver' for the purposes of national law.

32 In those circumstances, the Corte suprema di cassazione (Supreme Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Should European Union law be interpreted – where applicable on the basis also of the [UN Convention] – as meaning that a family caregiver of a severely disabled child who claims to have suffered indirect discrimination in an employment context as a result of the care provided by that individual is entitled to rely on the anti-discrimination protection that would be afforded to that disabled person, if they were the worker, by [Directive 2000/78]?

(2) If the answer to [the first question] is in the affirmative, should European Union law be interpreted – where applicable on the basis also of the [UN Convention] – as meaning that it is incumbent on the employer of the abovementioned caregiver to make reasonable accommodation to guarantee compliance – also in favour of that caregiver – with the principle of equal treatment in relation to other workers, modelled on the provisions laid down in relation to persons with disabilities in Article 5 of [Directive 2000/78]?

(3) If the answer to [the first and/or second questions] is in the affirmative, should European Union law be interpreted – where applicable also on the basis of the [UN Convention] – as meaning that the relevant caregiver for the purposes of [Directive 2000/78], should be understood as any person, whether a member of the family or a de facto cohabiting partner, who cares in a domestic setting, even informally, free of charge, for a significant number of hours, on an exclusive, continuous and long-term basis, for a person who, by reason of their severe disability, is not absolutely self-sufficient in the performance of the daily activities of living, or should European Union law be interpreted as meaning that the definition of caregiver in question is broader or even narrower than as stated above?'

The request for the reopening of the oral part of the procedure

33 By document lodged on 30 March 2025, G.L. requested the reopening of the oral part of the procedure under Article 83 of the Rules of Procedure of the Court of Justice.

34 G.L. submits that two questions in addition to those raised by the referring court, which she had set out in her written observations, need to be examined, on the ground that those questions were not assessed in the Advocate General's Opinion.

35 In that regard, it is settled case-law that the Court may of its own motion, or on a proposal from the Advocate General, or at the request of one of the parties, order the reopening of the oral part of the procedure in accordance with Article 83 of its Rules of Procedure, if it considers that it lacks sufficient information, or that the case must be dealt with on the basis of an argument which has not been debated between the parties (judgment of 15 September 2011, *Accor*, C-310/09, EU:C:2011:581, paragraph 19 and the case-law cited).

36 However, according to settled case-law, it is not necessary to examine questions submitted to the Court by the parties to the main proceedings other than those that were the subject of the national court's order for reference (judgment of 3 September 2015, *A2A*, C-89/14, EU:C:2015:537, paragraph 44 and the case-law cited).

37 Consequently, since the referring court did not ask the Court the two questions referred to by G.L. in her request for the reopening of the oral part of the procedure, the arguments set out in that request concerning the need to examine those two questions do not constitute grounds for reopening that oral part under Article 83 of the Rules of Procedure.

38 In those circumstances, the Court, having heard the Advocate General, finds that it has all the material necessary to answer the questions referred by the national court and that all the arguments necessary for the determination of the case at issue have been debated between the interested parties referred to in Article 23 of the Statute of the Court of Justice of the European Union.

39 The request to reopen the oral part of the procedure must therefore be refused.

Consideration of the questions referred for a preliminary ruling

The first question

40 By its first question, the referring court asks, in essence, whether Directive 2000/78 and, in particular, Article 1 and Article 2(1) and (2)(b) thereof, read in the light of Articles 21, 24 and 26 of the Charter of Fundamental Rights of the European Union ('the Charter') and Articles 2, 5 and 7 of the UN Convention, must be interpreted as meaning that the prohibition of indirect discrimination on grounds of disability applies to an employee who does not himself or herself have a disability but who is subject to such discrimination because of the assistance that that person provides to his or her child who has a disability, which enables that child to receive the primary care required by virtue of his or her condition.

41 As a preliminary point, it should be noted that it is clear from the title of, and preamble to, Directive 2000/78, as well as from its content and purpose, that it 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 (judgment of 21 October 2021, *Komisia za zashtita ot diskriminatsia*, C-824/19, EU:C:2021:862, paragraph 35 and the case-law cited).

42 In accordance with Article 3(1)(a) and (c) of Directive 2000/78, that directive applies, within the limits of the areas of competence conferred on the European Union, to all persons, both in the public and private sectors, including public bodies, as regards, inter alia, conditions for access to employment as well as employment and working conditions (judgment of 21 October 2021, *Komisia za zashtita ot diskriminatsia*, C-824/19, EU:C:2021:862, paragraph 36).

43 It is apparent from the order for reference that the indirect discrimination alleged by G.L. arises from the failure to adapt her working conditions, that is, in essence, her working hours, which fall within the employment and working conditions referred to in Article 3(1)(c) of Directive 2000/78.

44 Therefore, a situation such as that at issue in the main proceedings may fall within the scope of that directive.

45 In order to answer the first question, it should be recalled that Directive 2000/78 is a specific expression, within the field that it covers, of the general principle of non-discrimination laid down in Article 21 of the Charter, which prohibits any discrimination on grounds, inter alia, of disability (see, to that effect, judgment of 21 October 2021, *Komisia za zashtita ot diskriminatsia*, C-824/19, EU:C:2021:862, paragraph 32 and the case-law cited). As regards the situation at issue in the main proceedings, it is also necessary to take into account, in the context of the examination of that first question, the rights of the child and of persons with disabilities enshrined respectively in Articles 24 and 26 of the Charter.

46 Moreover, the European Union has approved the UN Convention, the provisions of which are therefore, from the time of that convention's entry into force, an integral part of the EU legal order. It follows that those provisions may, like those of the Charter, be relied on in order to

interpret the provisions of Directive 2000/78 and that the latter must, as far as possible, be interpreted in a manner that is consistent with that convention (see, to that effect, judgments of 11 April 2013, *HK Danmark*, C-335/11 and C-337/11, EU:C:2013:222, paragraphs 30 to 32, and of 18 January 2024, *Ca Na Negreta*, C-631/22, EU:C:2024:53, paragraph 41).

47 As is apparent from paragraphs 27 to 31 above, the referring court seeks to ascertain, in essence, whether Directive 2000/78, read in the light of Articles 21, 24 and 26 of the Charter and Articles 2 and 5 of the UN Convention, also applies to indirect discrimination 'by association' on grounds of disability, as regards an employee who cares for his or her child who has a disability.

48 In that regard, it must be borne in mind, in the first place, that the Court has previously held that a situation of 'direct discrimination by association' on grounds of disability is prohibited by Directive 2000/78. The prohibition of direct discrimination on grounds of disability laid down in Article 1 and Article 2(1) and (2)(a) of Directive 2000/78 is not limited solely to persons who themselves have a disability. Where an employer treats an employee who does not himself or herself have a disability less favourably than another employee is, has been or would be treated in a comparable situation, and it is established that the less favourable treatment of that employee is based on the disability of his or her child, whose care is provided primarily by that employee, such treatment is contrary to the prohibition of direct discrimination laid down in Article 2(2)(a) (see, to that effect, judgment of 17 July 2008, *Coleman*, C-303/06, EU:C:2008:415, paragraph 56).

49 The fact that that directive includes provisions designed to accommodate specifically the needs of persons with disabilities does not lead to the conclusion that the principle of equal treatment enshrined in that directive should be interpreted strictly, that is, as prohibiting only direct discrimination on grounds of disability and relating exclusively to persons with disabilities. Furthermore, recital 6 of that directive, concerning the Community Charter of the Fundamental Social Rights of Workers, refers both to the general combating of every form of discrimination and to the need to take appropriate action for the social and economic integration of persons with disabilities (see, to that effect, judgment of 17 July 2008, *Coleman*, C-303/06, EU:C:2008:415, paragraph 43).

50 In addition, the Court has held that the objectives pursued by Directive 2000/78, namely to lay down, as regards employment and occupation, a general framework for combating discrimination on one of the grounds referred to in Article 1 – including, in particular, disability – and the objective set out in recital 37 of creating a level playing field as regards equality in employment and occupation, and the effectiveness of that directive, would be undermined if the prohibition on direct discrimination laid down in Article 2(2)(a) of that directive was limited only to persons with disabilities and did not apply to a situation where an employee who does not himself or herself have a disability is, however, subject to direct discrimination on the grounds of his or her child's disability (see, to that effect, judgment of 17 July 2008, *Coleman*, C-303/06, EU:C:2008:415, paragraphs 47 and 48).

51 An interpretation of Directive 2000/78 limiting its application only to persons with disabilities is liable to deprive that directive of an important element of its effectiveness and to reduce the protection which it is intended to guarantee (see, to that effect, judgment of 17 July 2008, *Coleman*, C-303/06, EU:C:2008:415, paragraphs 50 and 51).

52 In the second place, as regards the question as to whether a situation of indirect discrimination 'by association' on grounds of disability is also prohibited by Directive 2000/78, first, it is necessary to state that, in accordance with Article 2(1) of Directive 2000/78, the principle of equal treatment is understood as meaning no direct or indirect 'discrimination whatsoever' on any of the grounds referred to in Article 1 of that directive.

53 Furthermore, it must be borne in mind that the purpose of that directive, as regards employment and occupation, is to combat all forms of discrimination on grounds of disability. The principle of equal treatment laid down in that directive in that area applies not to a particular category of person but by reference to the grounds mentioned in Article 1. That interpretation is supported by the wording of Article 13 EC, which constitutes the legal basis of Directive 2000/78 and which conferred, like Article 19 TFEU which replaced it, on the European Union the competence to take appropriate action to combat discrimination based, inter alia, on disability (see, to that effect, judgment of 17 July 2008, *Coleman*, C-303/06, EU:C:2008:415, paragraph 38). In the same way, the wording of recital 12 of that directive states 'any direct or indirect discrimination' based on disability should be prohibited throughout the European Union.

54 Furthermore, the question of the recognition of discrimination 'by association' on grounds of disability arises in the same way whether that discrimination is direct or indirect. In particular, the fact that, in the regime laid down in Directive 2000/78, the concept of indirect discrimination includes the possibility of a justification, unlike the concept of direct discrimination, has no effect on the characterisation of an act as discrimination 'by association' for the purposes of that directive.

55 It follows from the foregoing considerations that both the wording of Article 2(1) of Directive 2000/78 and the underlying objective of that directive argue in favour of a prohibition not only on direct discrimination 'by association', but also on indirect discrimination 'by association'.

56 Second, it must be pointed out, referring to the judgment of 17 July 2008, *Coleman* (C-303/06, EU:C:2008:415), that the Court has previously held, concerning the scope of Directive 2000/43, Articles 1 and 2 of which are worded in a similar way to Articles 1 and 2 of Directive 2000/78, that the scope cannot be defined restrictively and that the principle of equal treatment to which that directive refers applies not to a particular category of person but by reference to the grounds mentioned in Article 1 thereof, so that that principle is intended to benefit also persons who, although not themselves a member of the race or ethnic group concerned, nevertheless are subject to less favourable treatment or a particular disadvantage on one of those grounds (see, to that effect, judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480, paragraph 56). Accordingly, as the Advocate General stated in point 36 of his Opinion, the Court has expressly held that indirect discrimination 'by association' is prohibited by Directive 2000/43.

57 Third, for the purposes of an interpretation of the prohibition of discrimination that complies with the Charter, it must be noted that, as is apparent from the wording of Article 21(1) of the Charter, the general principle of non-discrimination that it lays down prohibits 'any discrimination' based, inter alia, on disability, ensuring therefore a broad application of that fundamental guarantee.

58 The prohibition of discrimination laid down in Article 2(2)(b) of Directive 2000/78 must also be interpreted in the light of Articles 24 and 26 of the Charter. Article 24, concerning the rights of the child, provides, in paragraph 1 thereof, that children are to have the right to such protection and care as is necessary for their well-being and, in paragraph 2, that in all actions relating to children,

whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. As regards Article 26 of the Charter, it 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 (see, to that effect, judgment of 18 January 2024, *Ca Na Negreta*, C-631/22, EU:C:2024:53, paragraph 40 and the case-law cited).

59 In addition, Article 21(1) of the Charter contains, at the very least, the same guarantees as those provided for in Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and is applicable in conjunction with the rights and freedoms guaranteed by that convention, which must be taken into account by virtue of Article 52(3) of the Charter as a minimum threshold of protection (see, by analogy, judgment of 3 April 2025, *Alchaster II*, C-743/24, EU:C:2025:230, paragraph 24).

60 The European Court of Human Rights has previously held that discriminatory treatment suffered by a person on account of the disability of his or her child, with whom he or she has close personal links and for whom he or she provides care, is a form of disability-based discrimination covered by Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (see, to that effect, ECtHR, 22 March 2016, *Guberina v. Croatia*, CE:ECHR:2016:0322JUD002368213, § 79), without distinction as to whether that discrimination was direct or indirect.

61 Fourth, as regards the provisions of the UN Convention which may guide the interpretation of Directive 2000/78, it should be borne in mind that the third paragraph of Article 2 of that convention provides that the concept of 'discrimination on the basis of disability' covers '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 and that concept includes 'all forms of discrimination' including denial of reasonable accommodation.

62 Article 5(2) of that convention specifies that States Parties are to prohibit 'all discrimination' on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against 'discrimination on all grounds.'

63 As regards Article 7 of that convention, it states, in paragraph 1, that the States Parties are to take all necessary measures to ensure 'the full enjoyment' by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children and, in paragraph 2, that, in all actions concerning children with disabilities, the best interests of the child are to be a primary consideration.

64 Further, as the Advocate General states in points 38 and 39 of his Opinion, the Committee on the Rights of Persons with Disabilities established in Article 34 of the UN Convention is of the view that, in the context, in particular, of the competences conferred on it by the Optional Protocol to that convention, of 13 December 2006, the obligation to prohibit all discrimination on the basis of disability, laid down in Article 5(2) thereof, seeks to protect persons with disabilities and their associates, for example parents of children with disabilities, and refers expressly to discrimination 'by association' without limiting it to direct discrimination.

65 It follows from the foregoing therefore that the principle of non-discrimination laid down in Article 21(1) of the Charter and given concrete expression by Directive 2000/78 also covers indirect discrimination 'by association' on grounds of disability.

66 In the light of all the foregoing considerations, the answer to the first question is that Directive 2000/78 and, in particular, Article 1 and Article 2(1) and (2)(b) thereof, read in the light of Articles 21, 24 and 26 of the Charter and Articles 2, 5 and 7 of the UN Convention, must be interpreted as meaning that the prohibition of indirect discrimination on grounds of disability applies to an employee who does not himself or herself have a disability but who is subject to such discrimination because of the assistance that that person provides to his or her child who has a disability, which enables that child to receive the primary care required by virtue of his or her condition.

The second question

67 By its second question, the referring court asks, in essence, whether, in the event that the first question is answered in the affirmative, Directive 2000/78 and, in particular, Article 5 thereof, read in the light of Articles 24 and 26 of the Charter and Article 2 and Article 7 of the UN Convention, must be interpreted as meaning that an employer is required, in order to ensure compliance with the principle of equal treatment of workers and the prohibition of indirect discrimination referred to in Article 2(2)(b) of that directive, to make reasonable accommodation, within the meaning of Article 5 of that directive, in respect of an employee who does not himself or herself have a disability but who provides, to his or her child who has a disability, the assistance which enables that child to receive the primary care required by virtue of his or her condition.

68 Under Article 5 of Directive 2000/78, 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 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.

69 As regards the question as to whether Article 5 applies in respect of an employee who does not himself or herself have a disability, but who provides, to his or her child who has a disability, the assistance which enables that child to receive the primary care required by virtue of his or her condition, it is true that it should be noted that the Court held, in paragraphs 39 and 42 of the judgment of 17 July 2008, *Coleman*, (C-303/06, EU:C:2008:415), that Directive 2000/78 contains a number of provisions which apply only to persons with disabilities, including, inter alia, Article 5.

70 However, in the case giving rise to that judgment, the request for a preliminary ruling did not concern the scope of that article nor whether, as in the present case, in order to ensure compliance with the principle of the equal treatment of workers and the prohibition on indirect discrimination referred to in Article 2(2)(b) of Directive 2000/78, reasonable accommodation, within the meaning of Article 5 thereof, must be put in place in respect of an employee who does not himself or herself have a disability, but who cares for his or her child who has a disability.

Furthermore, on the date on which the judgment was delivered, the Charter and the UN Convention, in the light of which Directive 2000/78 must be interpreted, had not yet, respectively, entered into force or been approved by the Community.

71 Consequently, with a view to the interpretation of Article 5 of Directive 2000/78 in conformity with the Charter, it should, first, be borne in mind, as stated in paragraph 58 above, that Articles 24 and 26 of the Charter provide, inter alia, respectively, that children are to have the right to such protection and care as is necessary for their well-being and 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.

72 As regards the UN Convention, it expressly provides in the third paragraph of Article 2 that the concept of discrimination on the basis of disability includes all forms of discrimination 'including denial of reasonable accommodation'. In accordance with the fourth paragraph of that article, 'reasonable accommodation' means 'necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.' As the Advocate General stated in point 53 of his Opinion, reasonable accommodation, as defined in Article 2, is not restricted to the needs of persons with disabilities in the workplace. Accordingly, that accommodation must, where necessary, also be provided to a worker who provides the assistance which enables that person with a disability to receive the primary care required by virtue of his or her condition.

73 Article 7(1) of that convention further provides that the States Parties are to take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children. In that regard, point (x) to the preamble of that convention expressly refers to the need to assist the families of persons with disabilities to enable families themselves to contribute towards the full and equal enjoyment of the rights of persons with disabilities. It follows that the employee must be able to provide, to his or her child who has a disability, the assistance that that child requires, which implies an obligation, on the employer, to adapt the working conditions of that employee.

74 Moreover, in the absence of such an obligation, the prohibition of indirect discrimination 'by association' against an employee who provides, to his or her child who has a disability, the assistance which enables that child to receive the primary care required by virtue of his or her condition, set out in paragraph 66 above, would be deprived of an important element of its effectiveness.

75 It follows from the foregoing that an employer is required to provide reasonable accommodation, within the meaning of Article 5 of Directive 2000/78, read in the light of Articles 24 and 26 of the Charter and Article 2 and Article 7(1) of the UN Convention, as regards such an employee.

76 As regards the types of reasonable accommodation that the employer of such a caregiver is required to make, the Court has previously held that Article 5 of Directive 2000/78, read in the light, in particular, of Article 2 of the UN Convention, prescribes a broad definition of the concept of 'reasonable accommodation' and that the reduction of working time may constitute one of the measures of accommodation referred to in Article 5. In certain circumstances, the

reassignment to another job may constitute such a measure (see, to that effect, respectively, judgments of 11 April 2013, *HK Danmark*, C-335/11 and C-337/11, EU:C:2013:222, paragraph 64, and of 10 February 2022, *HR Rail*, C-485/20, EU:C:2022:85, paragraph 43).

77 Accordingly, as the Advocate General states in point 56 of his Opinion, those measures of reasonable accommodation must enable the working environment to be adapted to the person with a disability in order to enable him or her to participate fully and effectively in professional life on an equal basis with other workers. Where the employee does not him- or herself have a disability but cares for a child who has a disability, those measures must also enable his or her working environment to be adapted to the same end.

78 However, Article 5 of Directive 2000/78 does not oblige an employer to take measures that would impose a disproportionate burden on it. In that regard, it follows from recital 21 of that directive that, in order to determine whether those measures give rise to a disproportionate burden on the employer, account should be taken in particular of the financial costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance. In addition, the possibility of assigning a person with a disability to another job is only available where there is at least one vacancy that the worker in question is capable of holding (judgment of 18 January 2024, *Ca Na Negreta*, C-631/22, EU:C:2024:53, paragraph 45 and the case-law cited).

79 In that connection, it is for the referring court to assess, in the light of the foregoing considerations, and having regard to all the relevant circumstances of the case at issue in the main proceedings, whether granting G.L.'s request to be assigned, on a permanent basis, fixed working hours in a given post, represented a disproportionate burden on her employer, within the meaning of Article 5 of Directive 2000/78.

80 In the light of the foregoing, the answer to the second question is that Directive 2000/78 and, in particular, Article 5 thereof, read in the light of Articles 24 and 26 of the Charter and Article 2 and Article 7(1) of the UN Convention, must be interpreted as meaning that an employer is required, in order to ensure compliance with the principle of equal treatment of workers and the prohibition of indirect discrimination referred to in Article 2(2)(b) of that directive, to make reasonable accommodation, within the meaning of Article 5 of that directive, in respect of an employee who does not himself or herself have a disability but who provides, to his or her child who has a disability, the assistance which enables that child to receive the primary care required by virtue of his or her condition, provided that that accommodation does not impose an unreasonable burden on that employer.

The third question

81 By its third question, the referring courts asks the Court, in essence, in the event that the first or second question is answered in the affirmative, how the concept of 'caregiver' is to be interpreted for the purpose of applying Directive 2000/78.

82 It must be borne in mind that the need to provide an interpretation of EU law which will be of use to the national court means that the national court is bound to observe scrupulously the requirements concerning the content of a request for a preliminary ruling, expressly set out in Article 94 of the Court's Rules of Procedure, of which the national court is supposed, in the context of the cooperation instituted by Article 267 TFEU, to be aware (order of 3 July 2014, *Talasca*, C-19/14, EU:C:2014:2049, paragraph 21, and judgment of 9 September 2021,

Toplofikatsia Sofia and Others, C-208/20 and C-256/20, EU:C:2021:719, paragraph 20 and the case-law cited). Those requirements are also set out in paragraphs 13, 15 and 16 of the Recommendations of the Court of Justice of the European Union to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2019 C 380, p. 1), which now appear in paragraphs 13, 15 and 16 of the Recommendations of the Court of Justice of the European Union to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ C, C/2024/ 6008).

83 Thus it is essential, as is stated in Article 94(c) of the Rules of Procedure, that the reference for a preliminary ruling itself must contain a statement of the reasons which prompted the referring court to inquire about the interpretation or validity of certain provisions of EU law, and the relationship between those provisions and the national legislation applicable to the case before the referring court. It is also essential, as is provided for in Article 94(a) of the Rules of Procedure, that the order for reference itself contains, at the very least, an account of the facts on which the questions are based (judgment of 13 December 2018, *Rittinger and Others*, C-492/17, EU:C:2018:1019, paragraph 39 and the case-law cited).

84 In the present case, the referring court seeks the Court's guidance as to the interpretation of the concept of 'caregiver', which is not provided for by Directive 2000/78 but which, as explained by the referring court in its request, appears to fall under national law.

85 Moreover, the order for reference does not provide any explanation as to the link which it establishes between the clarifications that it seeks from the Court in its third question concerning the concept of 'caregiver' and the dispute in the main proceedings.

86 It follows that the third question is inadmissible.

Costs

87 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. **Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and, in particular, Article 1 and Article 2(1) and (2)(b), read in the light of Articles 21, 24 and 26 of the Charter of Fundamental Rights of the European Union and Articles 2, 5 and 7 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,**

   must be interpreted as meaning that the prohibition of indirect discrimination on grounds of disability applies to an employee who does not himself or herself have a disability but who is subject to such discrimination because of the assistance that that person provides to his or her child who has a disability, which enables that child to receive the primary care required by virtue of his or her condition.

2. Directive 2000/78 and, in particular, Article 5 thereof, read in the light of Articles 24 and 26 of the Charter of Fundamental Rights of the European Union and Article 2 and Article 7(1) of the United Nations Convention on the Rights of Persons with Disabilities,

must be interpreted as meaning that an employer is required, in order to ensure compliance with the principle of equal treatment of workers and the prohibition of indirect discrimination referred to in Article 2(2)(b) of that directive, to make reasonable accommodation, within the meaning of Article 5 of that directive, in respect of an employee who does not himself or herself have a disability but who provides, to his or her child who has a disability, the assistance which enables that child to receive the primary care required by virtue of his or her condition, provided that that accommodation does not impose an unreasonable burden on that employer.

[Signatures]