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ECLI:EU:C:2016:917

JUDGMENT OF THE COURT (Third Chamber)

1 December 2016 (\*)

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment in employment and occupation — Articles 1 to 3 — Prohibition of all discrimination based on a disability — Whether a ‘disability’ exists — Concept of ‘long-term physical, mental, intellectual or sensory impairments’ — Charter of Fundamental Rights of the European Union — Articles 3, 15, 21, 30, 31, 34 and 35 — Dismissal of a worker who is temporarily unable to work, within the definition of national law, for an indeterminate period of time)

In Case C-395/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Social No 33 de Barcelona (Social Court No 33 of Barcelona, Spain), made by decision of 14 July 2015, received at the Court on 22 July 2015, in the proceedings

**Mohamed Daouidi**

v

**Bootes Plus SL,**

**Fondo de Garantía Salarial,**

**Ministerio Fiscal,**

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, M. Vilaras, J. Malenovský, M. Safjan (Rapporteur) and D. Šváby, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mr Daouidi, by G. Pérez Palomares, abogado,
- the Ministerio Fiscal, by A.C. Andrade Ortiz,
- the Spanish Government, by A. Gavela Llopis, acting as Agent,
- the French Government, by G. de Bergues, D. Colas and R. Coesme, acting as Agents,
- the European Commission, by D. Martin and N. Ruiz García, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 May 2016,

gives the following

## **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Articles 3, 15, 21(1), 30, 31, 34(1) and 35 of the Charter of Fundamental Rights of the European Union ('the Charter'), as well as of Articles 1 to 3 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 Mr Mohamed Daouidi, on the one hand, and Bootes Plus SL, the Fondo de Garantía Salarial (Wages Guarantee Fund, Spain) and the Ministerio Fiscal (Public Prosecutor, Spain), on the other, concerning the dismissal of Mr Daouidi which occurred while he was temporarily unable to work, as defined in national law, for an indeterminate period of time.

## **Legal context**

### *International law*

3 The United Nations Convention on the Rights of Persons with Disabilities, which was approved on behalf of the European Community by Council Decision 2010/48/EC of 26 November 2009 (OJ 2010 L 23, p. 35), ('the UN Convention') states, in recital (e) of its preamble:

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

4 Under Article 1 of that convention, entitled ‘Purpose’:

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

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

5 Article 2 of that convention, entitled ‘Definitions’, states, in its third paragraph:

“‘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’.

*EU law*

6 According to recitals 11, 12, 15 and 31 of Directive 2000/78:

‘(11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.

(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 Community. ...

...

(15) The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or practice. Such rules may provide, in particular, for indirect discrimination to be established by any means including on the basis of statistical evidence.

...

(31) The rules on the burden of proof must be adapted when there is a prima facie case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought. However, it is not for the respondent to prove that the plaintiff adheres to a particular religion or belief, has a particular disability, is of a particular age or has a particular sexual orientation.’

7 Article 1 of that directive, entitled ‘Purpose’, states:

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

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

‘1. For the purposes of this Directive, the “principle of equal treatment” shall mean that there shall be no direct or indirect discrimination on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

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

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or

(ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.’

9 Article 3 of that directive, entitled ‘Scope’, provides, in paragraph 1(c):

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

...

(c) employment and working conditions, including dismissals and pay’.

10 Article 10 of Directive 2000/78, entitled ‘Burden of proof’, provides, in paragraphs 1, 2 and 5:

‘1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.

...

5. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case.’

#### *Spanish law*

11 Article 9(2) of the Constitution states:

‘It is the responsibility of the public authorities to promote conditions ensuring that freedom and equality of individuals and of the groups to which they belong are real and effective, to remove the obstacles preventing or hindering their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life.’

12 Article 14 of the Constitution provides:

‘Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.’

13 Article 15 of the Constitution provides:

‘Everyone has the right to life and to physical and moral integrity, and under no circumstances may be subjected to torture or to inhuman or degrading punishment or treatment. The death penalty is hereby abolished, except as provided for by military criminal law in times of war.’

14 Article 55 of Real Decreto Legislativo 1/1995, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores (Royal Legislative Decree 1/1995

approving the consolidated text of the Law on the Workers' Statute) of 24 March 1995 (BOE No 75 of 29 March 1995, p. 9654), in its version applicable at the time of the facts in the main proceedings ('the Workers' Statute'), is worded as follows, in paragraphs 3 to 6:

3. Dismissals shall be classified as fair, unfair or null and void.

4. A dismissal shall be regarded as fair when the failure to perform duties alleged by the employer in the letter of notice is proved. If that is not the case, or if its form does not satisfy the requirements under paragraph 1 of the present article, the dismissal shall be considered unfair.

5. Any dismissal on one of the grounds of discrimination prohibited by the Constitution or by law or occurring in breach of the fundamental rights and public freedoms of workers shall be void. ...

6. Nullity of a dismissal shall entail the immediate reinstatement of the worker, with payment of unpaid wages or salary.'

15 Article 56(1) of that statute reads:

'Where a dismissal is declared to be unfair, the employer, within five days of notice of the judgment being served, may choose either to reinstate the worker or to pay compensation equivalent to 33 days' remuneration per year of service, periods shorter than a year being calculated pro rata on a monthly basis up to a maximum of 24 monthly payments. The option of compensation shall give rise to termination of the employment contract, which shall be deemed to have been effected on the date of actual cessation of work.'

16 Article 96(1) of Ley 36/2011, reguladora de la jurisdicción social (Law 36/2011 governing social jurisdiction) of 10 October 2011 (BOE No 245 of 11 October 2011, p. 106584) states:

'In proceedings in which the applicant's allegations give rise to an inference that there are substantiated indicia of discrimination on grounds of sex, sexual orientation or identity, racial or ethnic origin, religion or beliefs, lack of capacity, age, harassment and in any other case of infringement of a fundamental right or public freedom, the defendant shall be required to produce objective, reasonable and adequately proved justification for the measures adopted and for their proportionality.'

17 Article 108(1) and (2) of that law provides:

1. In the operative part of the judgment, the court shall classify the dismissal as fair, unfair or null and void.

It shall be classified as fair when the failure to perform duties alleged by the employer in the letter of notice is proved. If it is not proved, or if the formal requirements under Article 55(1) of [the Worker's Statute] have not been complied with, the dismissal shall be classified as unfair.

...

2. Any dismissal on one of the grounds of discrimination prohibited by the Constitution or by law or occurring in breach of the fundamental rights and public freedoms of workers shall be void.

...'

18 Article 110(1) of that law is worded as follows:

'If the dismissal is declared unfair, the employer shall be ordered to reinstate the worker on the same conditions as obtained before the dismissal, and to pay the wages for the period between dismissal and the disposal of proceedings challenging that dismissal referred to in Article 56(2) of [the Worker's Statute] or, if the worker so chooses, to pay him compensation, the amount of which shall be determined in accordance with Article 56(1) [of the Worker's Statute] ...'

19 Article 113 of that law reads:

'If a dismissal is declared null and void, an order shall be made for the immediate reinstatement of the worker and for payment of the wages outstanding. ...'

20 Article 181(2) of Law 36/2011 provides:

'In the course of the proceedings, once it is established that there is evidence of infringement of a fundamental right or public freedom, it shall be incumbent upon the defendant to produce objective, reasonable and sufficiently substantiated reasons for the measures adopted and the proportionality thereof.'

21 Article 2 of Real Decreto Legislativo 1/2013, por el que se aprueba el Texto Refundido de la Ley General de derechos de las personas con discapacidad y de su inclusión social (Royal Legislative Decree 1/2013 on the rights of persons with disabilities and their social inclusion) of 29 November 2013 (BOE No 289 of 3 December 2013, p. 95635) contains the following definitions:

'...

(a) "Disability" refers to the situation of persons with long-term impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.

...

(c) “Direct discrimination” refers to a situation in which a person with a disability finds himself or herself being treated less favourably than another person in a comparable situation, on grounds of, or as a result of, his or her disability.

(d) “Indirect discrimination” exists if a statutory or regulatory provision, a clause in an agreement or contract, an individual agreement, a unilateral decision, a criterion or practice, or an environment, product or service, ostensibly neutral, is liable to give rise to a particular disadvantage for one person in comparison with another on grounds of, or by reason of, disability, on condition that, objectively, it does not satisfy a legitimate objective and the means of achieving that objective are not appropriate and necessary.

...’

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

22 On 17 April 2014, Mr Daouidi was employed by Bootes Plus to work as a kitchen assistant in one of the restaurants in a hotel located in Barcelona (Spain).

23 To that end, Mr Daouidi and Bootes Plus entered into a contract of occasional employment on a contingent basis, determined by reference to an increase in work in the restaurant, for a period of three months for 20 hours per week. That contract laid down a probationary period of 30 days. On 1 July 2014, Mr Daouidi and Bootes Plus agreed to convert that part-time employment contract into a full-time contract for 40 hours per week.

24 On 15 July 2014, Mr Daouidi’s contract was extended by 9 months and the termination date was set as 16 April 2015. The kitchen chef, who gave an opinion in favour of that extension, also approved the conversion of the part-time contract into a full-time contract.

25 On 3 October 2014, Mr Daouidi slipped on the kitchen floor of the restaurant in which he worked and dislocated his left elbow, which had to be put in plaster. On the same date, Mr Daouidi commenced the procedure to have his temporary incapacity for work recognised.

26 Two weeks after that work accident, the kitchen chef contacted Mr Daouidi to ask about his state of health and to express his concern as to how long the situation might continue. Mr Daouidi replied that he could not return to work immediately.

27 On 26 November 2014, while he was still temporarily unable to work, Mr Daouidi received a notice of disciplinary dismissal from Bootes Plus, worded as follows:



‘We regret to inform you that we have taken a decision to terminate the employment relationship between you and this undertaking: you are dismissed immediately as from today. The reason for this decision is that you did not meet the expectations of the undertaking or perform at the level the undertaking considers appropriate or suitable for the discharge of your duties in the workplace. The facts set out are subject to the penalty of dismissal in accordance with [the Worker’s Statute].’

28 On 23 December 2014, Mr Daouidi brought an action before the Juzgado de lo Social No 33 de Barcelona (Social Court No 33, Barcelona, Spain) seeking, primarily, a declaration that his dismissal was null and void, within the meaning of Article 108(2) of Law 36/2011.

29 In that regard, Mr Daouidi submitted, first, that the dismissal infringed his fundamental right to physical integrity, as enshrined in Article 15 of the Constitution, in particular since the restaurant manager had asked him to return to work on the weekend of 17 to 19 October 2014, which he was not in a position to do. Second, he submitted, that dismissal was discriminatory on the ground that the real reason behind it was his being temporarily unable to work as a result of his work accident and that, in particular, he was therefore covered by the concept of ‘disability’, within the meaning of Directive 2000/78 and the judgment of 11 April 2013, *HK Danmark* (C-335/11 and C-337/11, EU:C:2013:222).

30 In the alternative, Mr Daouidi asked that court to declare his dismissal ‘unfair’ within the meaning of Article 108(1) of Law 36/2011.

31 The referring court points out that there is sufficient evidence on which to take the view that, although Mr Daouidi’s dismissal has the appearance and form of a dismissal on disciplinary grounds, the true reason for the dismissal was his temporary inability to work for an indeterminate period of time as a result of the accident that he had suffered at work.

32 According to that court, it is clear from the case-law of the Tribunal Superior de Justicia de Cataluña (Higher Court of Justice of Catalonia, Spain), the Tribunal Supremo (Supreme Court, Spain) and the Tribunal Constitucional (Constitutional Court, Spain) that dismissal on grounds of illness or of temporary disability resulting from an accident at work is not considered to be discriminatory, with the result that that dismissal cannot be considered ‘void’ within the meaning of Article 108(2) of Law 36/2011.

33 However, the referring court is unsure whether such a dismissal is not contrary to EU law in that it might constitute an infringement of the principle of non-discrimination, of the right to protection against unjustified dismissal, of the right to fair and just working conditions, of the entitlement to social security benefits and social services, and of the right to health protection, enshrined respectively in Articles 21(1), 30, 31, 34(1) and 35 of the Charter.

34 Moreover, the referring court raises the question as to whether, in the dispute in the main proceedings, there is discrimination based on ‘disability’, within the meaning of Directive 2000/78. First of all, the limitation from which Mr Daouidi has suffered since he dislocated his elbow is evident. In that regard, that court specifies that, at the time of the hearing before it in the case in the main proceedings, namely about six months after Mr Daouidi’s accident at work, his left elbow was still in plaster. Furthermore, Mr Daouidi’s employer took the view that his incapacity for work had continued for too long and was incompatible with the employer’s interests, with the consequence that the requirement relating to the ‘long-term’ nature of the limitation was satisfied. Finally, that dismissal decision prevented Mr Daouidi’s full and effective participation in working life in the same way as other workers.

35 In the event that Mr Daouidi’s dismissal was carried out in breach of the fundamental rights enshrined in EU law, the dismissal must be declared to be null and void, and not merely unfair.

36 In those circumstances the Juzgado de lo Social No 33 de Barcelona (Social Court No 33, Barcelona) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must the general prohibition of discrimination affirmed in Article 21(1) of the Charter of Fundamental Rights of the European Union be interpreted as including, within the ambit of its prohibition and protection, the decision of an employer to dismiss a worker, previously well regarded professionally, merely because of his finding himself in a situation of temporary incapacity for work — of uncertain duration — as a result of an accident at work, when he was receiving health assistance and financial benefits from Social Security?’

(2) Must Article 30 of the Charter be interpreted as meaning that the protection that must be afforded a worker who has been the subject of a manifestly arbitrary and groundless dismissal must be the protection provided for in national legislation for every dismissal which infringes a fundamental right?

(3) Would a decision of an employer to dismiss a worker previously well regarded professionally merely because he was subject to temporary incapacity — of uncertain duration — as a result of an accident at work, when he is receiving health assistance and financial benefits from Social Security, come within the ambit and/or protection of Articles 3, 15, 31, 34(1) and 35(1) of the Charter (or any one or more of them)?

(4) If the three foregoing questions (or any of them) are answered in the affirmative and the decision to dismiss the worker, previously professionally well regarded, merely because he was subject to temporary incapacity — of uncertain duration — as a result of an accident at work, when he is receiving health assistance and financial benefits from Social Security, is to be interpreted as coming within the ambit and/or protection of one or more articles of the [Charter], may those articles be applied by the national court in order to settle a dispute between private individuals, either on the view that — depending

on whether a “right” or “principle” is at issue — that they enjoy horizontal effect or by virtue of application of the “principle that national law is to be interpreted in conformity with an EU directive”?

(5) If the four foregoing questions should be answered in the negative, would the decision of an employer to dismiss a worker, previously well regarded professionally, merely because he was subject to temporary incapacity — of uncertain duration — by reason of an accident at work, be caught by the term “direct discrimination on grounds of disability” as one of the grounds of discrimination envisaged in Articles 1, 2 and 3 of Directive 2000/78?’

### **The fifth question referred**

37 By its fifth question, which it is appropriate to examine first, the referring court asks, in essence, whether Directive 2000/78 must be interpreted as meaning that the fact that a person finds himself or herself temporarily unable to work, as defined in national law, for an indeterminate period of time by reason of an accident at work implies, by itself, that the limitation of that person’s capacity can be defined as ‘long-term’, within the meaning of ‘disability’ under that directive.

38 As a preliminary point, it should be recalled that the purpose of Directive 2000/78, as stated in Article 1 thereof, is to lay down a general framework for combating discrimination, as regards employment and occupation, on any of the grounds referred to in that article, which include disability. In accordance with Article 3(1)(c) of that directive, the latter applies, within the limits of the areas of competence conferred on the European Union, to all persons, in both the public and private sectors, in relation to, *inter alia*, the conditions governing dismissal.

39 In the present case, the referring court seeks to determine whether the condition of Mr Daouidi, who was dismissed while temporarily unable to work, as defined in national law, for an indeterminate period of time, is covered by the notion of ‘disability’ within the meaning of that directive.

40 In that regard, it must be recalled that the European Union approved the UN Convention by way of Decision 2010/48. Consequently, the provisions of that convention are thus, from the time of its entry into force, an integral part of the EU legal order (see judgment of 18 March 2014, *Z.*, C-363/12, EU:C:2014:159, paragraph 73 and the case-law cited). Moreover, according to the appendix to Annex II to that decision, which concerns independent living and social inclusion, work and employment, Directive 2000/78 is one of the EU acts relating to matters governed by that convention.

41 It follows that that convention may be relied on for the purposes of interpreting that directive, which must, as far as possible, be interpreted in a manner that is consistent with that convention (see judgments of 11 April 2013, *HK Danmark*, C-335/11 and C-337/11, EU:C:2013:222, paragraph 32, and of 18 March 2014, *Z.*, C-363/12, EU:C:2014:159, paragraph 75).

42 It is for that reason that, following the ratification by the EU of the UN Convention, the Court took the view that the concept of ‘disability’ within the meaning of Directive 2000/78 must be understood as referring to a limitation which results in particular from long-term physical, mental or psychological impairments which, in interaction with various barriers, may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers (see judgments of 11 April 2013, *HK Danmark*, C-335/11 and C-337/11, EU:C:2013:222, paragraph 38; of 18 March 2014, *Z.*, C-363/12, EU:C:2014:159, paragraph 76; and of 18 December 2014, *FOA*, C-354/13, EU:C:2014:2463, paragraph 53).

43 Consequently, the expression ‘persons with disabilities’ used in Article 5 of that directive must be interpreted as encompassing all persons suffering from a disability corresponding to the definition set out in the preceding paragraph (judgment of 4 July 2013, *Commission v Italy*, C-312/11, not published, EU:C:2013:446, paragraph 57).

44 It must be added that the directive covers, inter alia, disabilities caused by an accident (see, to that effect, judgment of 11 April 2013, *HK Danmark*, C-335/11 and C-337/11, EU:C:2013:222, paragraph 40).

45 Therefore, if an accident entails a limitation resulting in particular from long-term physical, mental or psychological impairments which, in interaction with various barriers, may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers, and if that limitation is long-term, it may come within the concept of ‘disability’ within the meaning of Directive 2000/78 (see, by analogy, judgment of 11 April 2013, *HK Danmark*, C-335/11 and C-337/11, EU:C:2013:222, paragraph 41).

46 In the present case, it is clear from the order for reference that Mr Daouidi was the victim of an accident at work and that he dislocated his left elbow, which had to be put in plaster. It is necessary to find that, in principle, such a physical state is reversible.

47 The referring court specifies that, at the time of the hearing before it in the case in the main proceedings, that is to say, six months after that accident at work, Mr Daouidi’s elbow was still in plaster and that he was therefore not in a position to carry out his professional activity.

48 In those circumstances, it is common ground that Mr Daouidi suffered from a limitation to his capacity resulting from physical injury. Therefore, in order to determine whether Mr Daouidi may be considered to be a ‘person with a disability’ for the purposes of Directive 2000/78 and therefore come within the scope of that directive, it is necessary to assess whether that limitation to his capacity, 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, is ‘long-term’ within the meaning of the case-law cited in paragraph 42 above.

49 The UN Convention does not define ‘long-term’ as regards a physical, mental, intellectual or sensory impairment. Directive 2000/78 does not define ‘disability’, nor does it clarify the concept of a ‘long-term’ limitation of a person’s capacity for the purposes of that concept.

50 According to settled case-law, the need for a uniform application of EU law and the principle of equality require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, which must take into account the context of that provision and the objective pursued by the legislation in question (see, inter alia, judgments of 18 January 1984, *Ekro*, 327/82, EU:C:1984:11, paragraph 11, and of 16 June 2016, *Pebros Servizi*, C-511/14, EU:C:2016:448, paragraph 36).

51 In the absence of such an express reference to the law of the Member States, the concept of a ‘long-term’ limitation of a person’s capacity, within the meaning of the concept of ‘disability’ referred to by Directive 2000/78, must therefore be given an autonomous and uniform interpretation.

52 It follows that the fact that Mr Daouidi comes under the legal arrangements as being ‘temporarily’ unable to work, within the meaning of Spanish law, is not such as to preclude the limitation of his capacity from being classified as ‘long-term’ within the meaning of Directive 2000/78, read in the light of the UN Convention.

53 Moreover, the ‘long-term’ nature of the 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 (see, to that effect, judgment of 11 July 2006, *Chacón Navas*, C-13/05, EU:C:2006:456, paragraph 29).

54 With regard to the notion of the ‘long-term’ nature of a limitation in the context of Article 1 of Directive 2000/78 and of the objective pursued by that directive, it must be recalled that, according to the case-law of the Court, the importance which the EU legislature attaches to measures for adapting the workplace to the disability demonstrates that it envisaged situations in which participation in professional life is hindered over a long period of time (see judgment of 11 July 2006, *Chacón Navas*, C-13/05, EU:C:2006:456, paragraph 45).

55 It is for the referring court to determine whether the limitation of the capacity of the person concerned is or is not ‘long-term’, as such an assessment is, first and foremost, factual in nature.

56 The evidence which makes it possible to find that a limitation is ‘long-term’ includes the fact that, at the time of the allegedly discriminatory act, the incapacity of the person concerned does not display a clearly defined prognosis as regards short-term progress or, as the Advocate General has, in essence, noted in point 47 of his Opinion, the

fact that that incapacity is likely to be significantly prolonged before that person has recovered.

57 In the context of the verification of the ‘long-term’ nature of the limitation of capacity of the person concerned, the referring court must base its decision on all of the objective evidence before it, in particular on documents and certificates relating to that person’s condition, established on the basis of current medical and scientific knowledge and data.

58 In the event that the referring court should conclude that the limitation of Mr Daouidi’s capacity is ‘long-term’, it is necessary to recall that unfavourable treatment on grounds of disability undermines the protection provided for by Directive 2000/78 only in so far as it constitutes discrimination within the meaning of Article 2(1) of that directive (see judgments of 11 July 2006, *Chacón Navas*, C-13/05, EU:C:2006:456, paragraph 48, and of 11 April 2013, *HK Danmark*, C-335/11 and C-337/11, EU:C:2013:222, paragraph 71).

59 In light of the foregoing, the answer to the fifth question is that Directive 2000/78 must be interpreted as meaning that:

- the fact that the person concerned finds himself or herself in a situation of temporary incapacity for work, as defined in national law, for an indeterminate amount of time, as the result of an accident at work, does not mean, in itself, that the limitation of that person’s capacity can be classified as being ‘long-term’, within the meaning of the definition of ‘disability’ laid down by that directive, read in the light of the UN Convention;
- the evidence which makes it possible to find that such a limitation is ‘long-term’ includes the fact that, at the time of the allegedly discriminatory act, the incapacity of the person concerned does not display a clearly defined prognosis as regards short-term progress or the fact that that incapacity is likely to be significantly prolonged before that person has recovered; and
- in the context of the verification of that ‘long-term’ nature, the referring court must base its decision on all of the objective evidence in its possession, in particular on documents and certificates relating to that person’s condition, established on the basis of current medical and scientific knowledge and data.

### **The other four questions referred**

60 By its first four questions, which it is appropriate to examine together and secondly, the referring court essentially seeks an interpretation of Articles 3, 15, 21(1), 30, 31, 34(1) and 35 of the Charter in a situation such as that at issue in the main proceedings.

61 In this regard, it must be recalled that, according to settled case-law, in the context of a reference for a preliminary ruling under Article 267 TFEU, the Court may interpret EU law only within the limits of the powers conferred on it (judgment of 27 March 2014, *Torralbo Marcos*, C-265/13, EU:C:2014:187, paragraph 27, and order of 25 February 2016, *Aiudapds*, C-520/15, not published, EU:C:2016:124, paragraph 18).

62 With regard to the Charter, Article 51(1) thereof states that the provisions of the Charter are addressed to the Member States only when they are implementing EU law. Article 6(1) TEU and Article 51(2) of the Charter provide that the provisions of the Charter do not extend the scope of EU law beyond the powers of the EU as defined in the Treaties.

63 As is apparent from the Court's settled case-law, where a legal situation does not come within the scope of EU law, the Court does not have jurisdiction to rule on it and any provisions of the Charter relied upon cannot, of themselves, form the basis for such jurisdiction (see judgment of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 22, and order of 25 February 2016, *Aiudapds*, C-520/15, not published, EU:C:2016:124, paragraph 20).

64 In that regard, it must be held that, at the present stage of the main proceedings, it has not been established that the situation at issue comes within the scope of a provision of EU law other than those set out in the Charter.

65 With regard, in particular, to Directive 2000/78, and as has been stated in the answer to the fifth question, the fact that a person finds himself or herself in a situation of temporary incapacity for work, as defined in national law, for an indeterminate period of time by reason of an accident at work, does not, by itself, mean that the limitation suffered by that person may be classified as 'long-term', within the meaning of the notion of 'disability' referred to by Directive 2000/78.

66 Furthermore, the order for reference does not contain, *inter alia*, any prognosis as regards the potential recovery, full or otherwise, of Mr Daouidi, or any information on the possible after-effects or consequences that this accident will have on the performance of the tasks for which he was recruited.

67 Therefore, as pointed out by the Advocate General in point 52 of his Opinion, since the application of Directive 2000/78 to the case in the main proceedings is linked to the assessment by the referring court to be carried out following the present judgment of the Court, it is not necessary, at the present stage of the proceedings, to find that the situation at issue in the main proceedings comes within the scope of EU law (see, to that effect, judgment of 27 March 2014, *Torralbo Marcos*, C-265/13, EU:C:2014:187, paragraph 40).

68 In those circumstances, it must be held that the Court does not have jurisdiction to answer the first four questions.

## Costs

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

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

**Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that:**

- **the fact that the person concerned finds himself or herself in a situation of temporary incapacity for work, as defined in national law, for an indeterminate amount of time, as the result of an accident at work, does not mean, in itself, that the limitation of that person’s capacity can be classified as being ‘long-term’, within the meaning of the definition of ‘disability’ laid down by that directive, read in the light of the United Nations Convention on the Rights of Persons with Disabilities, which was approved on behalf of the European Community by Council Decision 2010/48/EC of 26 November 2009;**
- **the evidence which makes it possible to find that such a limitation is ‘long-term’ includes the fact that, at the time of the allegedly discriminatory act, the incapacity of the person concerned does not display a clearly defined prognosis as regards short-term progress or the fact that that incapacity is likely to be significantly prolonged before that person has recovered; and**
- **in the context of the verification of that ‘long-term’ nature, the referring court must base its decision on all of the objective evidence in its possession, in particular on documents and certificates relating to that person’s condition, established on the basis of current medical and scientific knowledge and data.**

[Signatures]

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\* Language of the case: Spanish.

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