ECLI:EU:C:2021:274

Provisional text

JUDGMENT OF THE COURT (Third Chamber)

15 April 2021 (*)

(Reference for a preliminary ruling – Social policy – Directive 2000/78/EC – Principle of equal treatment in employment and occupation – Prohibition of discrimination on grounds of age – Workers placed under a labour reserve system until termination of their contract of employment – Wage reduction and reduction or loss of severance pay – System applicable to public-sector workers close to full-time retirement – Reduction of public-sector wage costs – Article 6(1) – Legitimate social policy objective – Economic crisis)

In Case C-511/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Areios Pagos (Court of Cassation, Greece), made by decision of 11 June 2019, received at the Court on 4 July 2019, in the proceedings

AB

v

Olympiako Athlitiko Kentro Athinon – Spyros Louis,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, N. Wahl, F. Biltgen (Rapporteur), L.S. Rossi and J. Passer, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– AB, by D. Vervesos and D. Vasileiou, dikigoroi,

– Olympiako Athlitiko Kentro Athinon – Spyros Louis, by V. Kounelis, dikigoros,

– the Greek Government, by E.-M. Mamouna, G. Papadaki, A. Dimitrakopoulou and K. Georgiadis, acting as Agents,

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

after hearing the Opinion of the Advocate General at the sitting on 19 November 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 2 and 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

2 The request has been made in proceedings between AB and Olympiako Athlitiko Kentro Athinon – Spyros Louis ('OAKA') concerning his placement, prior to his retirement, under the labour reserve system provided for by national law.

Legal context

EU law

3 Article 1 of Directive 2000/78 provides that the purpose of that directive is to lay down a general framework for combating discrimination on the grounds of, inter alia, age as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

4 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 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, …

…'

5 Article 3(1) of Directive 2000/78 reads as follows:

‘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;

…’

6 Article 6(1) of that directive provides:

‘Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;

…’

Greek law

7 Article 34, entitled ‘Abolition of vacant, private-law posts and labour reserve’, of Nómos 4024/2011: Syntaxiodotikés rythmíseis, eniaío misthológio – vathmológio, ergasiakí efedreía kai álles diatáxeis efarmogís tou mesopróthesmou plaisíou dimosionomikís stratigikís 2012-2015 (Law 4024/2011 on pension arrangements, uniform pay scales/employment grades, the labour reserve and other provisions implementing the Medium-Term Fiscal Strategy Framework 2012-2015) of 27 October 2011 (FEK A’ 226), as amended by the decree-law of 16 December 2011 converted into law by Article 1 of Nómos 4047/2012 (Law 4047/2012) of 23 February 2012 (FEK A’ 31) (‘Law 4024/2011’), provides in paragraphs 1 to 4 and 8:

‘1. Article 37(7) of Law 3986/2011 (FEK A’ 152) is replaced as follows:

…

(c) Staff members subject to the labour reserve system shall continue to receive, with effect from their placement under that system and for 12 months or, where provision is so made by more specific provisions, 24 months, 60% of the basic salary which they received at the time of their placement under the system in question.

…

(e) Placement under the labour reserve system shall be deemed to constitute advance notice of dismissal for all legal purposes and the remuneration paid to the staff members subject to that system in accordance with the provisions set out in point (c) shall be calculated by offsetting it against the severance pay payable, where appropriate, at the end of the labour reserve period.

…

2. The posts of workers bound by an employment relationship governed by private law and of indefinite duration within the administrative authorities, legal persons governed by public law, first-tier and second-tier local authorities and their establishments, legal persons governed by private law that are owned by the State, legal persons governed by public law or local authorities, because they are responsible for tasks entrusted to them by the State, administrative authorities or local authorities, they are monitored by the State, administrative authorities or local authorities, their management board is appointed and majority-controlled by the State, administrative authorities or local authorities or at least 50% of their annual budget is permanently subsidised in accordance with the relevant provisions using funds provided by the abovementioned bodies, as well as the undertakings, bodies and public limited companies coming within the scope of the provisions of Chapter I of Law 3429/2005 (FEK A' 314), as amended by paragraph 1(a) [of Article 1] of Law 3899/2010 (FEK A' 212), which are vacant on the entry into force of this Law, shall be abolished. …

3. Contracts of employment governed by private law and of indefinite duration of incumbent employees within the abovementioned bodies … shall end by operation of law and automatically when those employees satisfy the conditions of eligibility for a full pension, which correspond to 35 years' membership of the social security scheme, provided that that entitlement is acquired, in accordance with the relevant provisions, no later than 31 December 2013 inclusive …

4. The workers referred to in the previous paragraph shall automatically be placed under the labour reserve system with effect from 1 January 2012 and until the termination of their employment relationship in accordance with the detailed rules set out in the previous paragraph. …

…

8. The labour reserve period shall not exceed 24 months in respect of the workers referred to in paragraph 4 …'

8 The second paragraph of Article 8 of Nómos 3198/1955: Perí tropopoiíseos kai sympliróseos ton perí katangelías tis schéseos ergasías diatáxeon (Law 3198/1955 amending and supplementing the provisions relating to the termination of an employment relationship) of 23 April 1955 (FEK A' 98), in the version applicable to the facts in the main proceedings ('Law 3198/1955'), provides:

'Employees affiliated to a pension insurance body who satisfy or will satisfy the conditions for claiming payment of a full old-age pension may, … if they have employee status, either leave their job or be dismissed by their employer, while receiving, in both those cases, respectively, if they are covered by supplementary insurance, 40% of the severance pay to which they are entitled under the provisions in force in the case where their contract of employment is terminated without notice by the employer, or, if they are not covered by supplementary insurance, 50% of that severance pay.'

9 Article 10(1) of Nómos 825/1978: Perí antikatastáseos, tropopoiíseos kai sympliróseos diatáxeon tis diepoúsis to IKA Nomothesías kai rythmíseos synafón themáton (Law 825/1978 replacing, amending and supplementing the provisions of the legislation governing the IKA and

laying down related provisions) of 13 November 1978 (FEK A' 189), in the version thereof applicable to the facts in the main proceedings ('Law 825/1978'), provides that it is a requirement for the entitlement of an employee who is insured with the Idryma Koinonikon Asfaliseon – Eniaio Tameio Asfalissis Misthoton (IKA-ETAM) (Social Security Body – General Insurance Fund for Employees, Greece) to claim a full old-age pension that he or she should have completed 10 500 days' (35 years') employment and be at least 58 years old on the date of submission of the application to the insurer.

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

10 It is apparent from the order for reference that AB was recruited in 1982 by OAKA, a legal person governed by private law within the broader public sector, under a contract of indefinite duration and was assigned the duties of technical adviser within OAKA as from 1998.

11 With effect from 1 January 2012, AB was automatically placed under the labour reserve system pursuant to Article 34(1)(c), (3), first paragraph, (4) and (8) of Law 4024/2011, which resulted in his pay being reduced to 60% of his basic salary.

12 On 30 April 2013, OAKA terminated AB's contract of employment without paying him the severance pay referred to in the second paragraph of Article 8 of Law 3198/1955 in the event of dismissal or departure of the employee in the case where the conditions of eligibility for a full pension are satisfied. That refusal to provide severance pay was based on Article 34(1)(e) of Law 4024/2011, which provides that the severance pay which is payable may be offset against the remuneration paid to the employee during his or her assignment to the labour reserve.

13 By his action brought before the Monomeles Protodikeio Athinon (Court of First Instance (single judge), Athens, Greece), AB contested, inter alia, the validity of his transfer to the labour reserve system, claiming that the provisions of Article 34 of Law 4024/2011 establish a difference in treatment on grounds of age that is contrary to Directive 2000/78, and that that difference in treatment is not objectively justified by any legitimate aim whatsoever and the means of achieving such an objective are neither appropriate nor necessary. On that ground, he claimed that OAKA should be ordered to pay him the difference between the salary of which he was in receipt prior to being placed under the labour reserve system and the salary which he was paid after being placed under that reserve. AB also relied on the second paragraph of Article 8 of Law 3198/1955 to claim from OAKA the payment of a sum by way of severance pay together with statutory interest.

14 After that court had upheld that action in part, OAKA lodged an appeal before the Monomeles Efeteio Athinon (Court of Appeal (single judge), Athens, Greece), which set aside the judgment given at first instance and dismissed the part of AB's action which had been upheld in that judgment.

15 AB appealed on a point of law to the Areios Pagos (Court of Cassation, Greece). That court observes that there is no direct discrimination on grounds of age, in so far as the provisions of Article 34 of Law 4024/2011 do not provide for a specific age limit for staff subject to the labour reserve system. However, it is unsure whether that scheme involves indirect discrimination on grounds of age, in that it is reserved for employees who are close to full retirement, which presupposes that they have 35 years of contributions, those conditions having had to be met during the period from 1 January 2012 to 31 December 2013.

16 In that regard, the referring court notes, first, that an employee such as AB, who is affiliated to the IKA-ETAM, could claim a full pension subject to the twofold condition that he or she has

completed 35 years of contributions and reached the age of 58, in accordance with Article 10(1) of Law 825/1978.

17 The referring court then raises the question as to whether, if indirect discrimination on grounds of age is established, the reasons set out in the explanatory memorandum to Law 4024/2011 are capable of constituting an objectively and reasonably legitimate aim justifying such a difference in treatment. In that context, it states that the objective of the provisions of Article 34 of that law was to address the immediate need to reduce wage costs in accordance with the agreement concluded between the Hellenic Republic and its creditors and to consolidate the finances of the State and of the broader public sector in order to tackle the economic crisis that had hit that Member State.

18 If so, the referring court asks, finally, whether, on the one hand, the reduction in the remuneration of staff placed under the labour reserve system, taking into account the protective measures established by that law in respect of those staff members, and, on the other hand, the partial or total cancellation of the severance pay provided for in the second paragraph of Article 8 of Law 3198/1955 for those staff members constitute appropriate and necessary means by which to achieve that objective.

19 In those circumstances the Areios Pagos (Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does the adoption by the Member State of legislation applicable to government, local authorities and public-law legal entities and to all bodies (private-law legal entities) in the broader public sector in general in their capacity as employer, such as that adopted under Article 34(1)(c), (3), first paragraph, and (4) of Law 4024/2011 placing staff under a private-law contract of employment with the above bodies on reserve for a period not exceeding twenty-four (24) months between 1 January 2012 and 31 December 2013 based solely on the criterion of the closest entitlement to retire on a full old-age pension corresponding to thirty-five (35) years’ insurance, constitute indirect age discrimination within the meaning of Article 2(1) and (2)(b) and Article 3(1)(c) of Directive 2000/78, especially given the fact that, under the insurance legislation in force at the time and disregarding cases that are of no relevance here, staff under a contract of employment needed to be insured with the [Idryma Koinonikon Asfaliseon (IKA) (Social Security Body)] or some other major insurance fund for (at least) 10 500 working days (35 years) and to be (at least) 58 years of age in order to substantiate their right to retire on a full old-age pension, without of course precluding the possibility of the above period of insurance (35 years) being completed at a different age depending on the individual case?

(2) If the answer to the first question is in the affirmative, can the adoption of a labour reserve system be objectively and logically justified, within the meaning of Article 2(2)(b)(i) and Article 6(1)(a) of the Directive, by the immediate need to ensure organisational, operational and fiscal results and, more specifically, by the immediate need to cut public spending in order to achieve certain specific quantitative targets by the end of 2011, as referred to in the explanatory memorandum to [Law 4024/2011] and provided for in particular under the Medium-Term Fiscal Strategy Framework, and thus honour Greece’s undertaking to its partner-lenders to address the very acute and prolonged fiscal and economic crisis gripping the country and, at the same time, to restructure and reduce the swollen public sector?

(3) If the answer to the second question is in the affirmative:

(a) Is the adoption of a measure such as that adopted under Article 34(1)(c) of Law 4024/2011, providing for the salary of staff placed on reserve to be cut drastically to 60% of the basic salary of which they were in receipt when they were placed on reserve, without at the same time requiring the said staff to work in the relevant public sector, and causing the loss (in fact) of any promotion in terms of pay-scale or employment grade during the period between their being placed on reserve and their dismissal due to retirement on a full old-age pension, an appropriate and necessary means of achieving the above aim, within the meaning of Article 2(2)(b)(i) and Article 6(1)(a) of Directive 2000/78, where:

(i) such staff retain the facility to find an alternative occupation (in the private sector) or have the opportunity to pursue a freelance profession or business while on reserve, without losing the right to payment of the aforesaid reduced basic salary, unless the salary or income from their new occupation or employment exceeds the salary of which they were in receipt prior to being placed on reserve, in which case the above reduced basic salary is cut by the surplus (see Article 34(1)(f) [of Law 4024/2011]); and

(ii) the public-sector employer or, if it is abolished, the [national employment agency] undertakes to pay, up to the time of retirement, both the employer's and the employee's main, supplementary and health and welfare insurance contributions to the relevant insurance fund based on the salary of which the employee was in receipt prior to being placed on reserve pending the employee's retirement (see Article 34(1)(d) [of Law 4024/2011]); and

(iii) exemptions from labour reserve status are provided for vulnerable social groups which require protection (other spouse placed on reserve, spouse or child with a disability of at least 67% living with and dependent on the employee, employee with a disability of at least 67%, parents of large families, single-parent family living with and dependent on the employee) (see Article 34(1)(b) [of Law 4024/2011]); and

(iv) the aforesaid staff are granted the priority option of transferring to other vacant posts in public-sector bodies based on objective and merit-based criteria by including them in the selection lists of the [Supreme Council for Civil Personnel Selection] (see Article 34(1)(a) [of Law 4024/2011]), although that option was limited in fact owing to drastic cutbacks in staff recruitment by various public-sector bodies due to the need to cut spending; and

(v) care is taken to adopt measures concerning the repayment of housing loans obtained from the [Deposits and Loans Fund] by workers placed on reserve and to draft an agreement between the Greek State and the [Hellenic Bank Association] to facilitate the repayment of loans contracted by such staff from other banks, based on each worker's total family income and assets (see Article 34(10) and (11) [of Law 4024/2011]); and

(vi) provision has been made under a more recent law (see Article 1(15) of Law 4038/2012 – FEK A' 14) for pension regulations and the payment order to be issued as a matter of priority for the staff referred to under (ii) and (iii), that is to say, within no more than four months of their dismissal and submission of the supporting documents required in order to release their pension; and

(vii) the aforesaid loss of promotion in terms of pay-scale or employment grade by staff under a private-law contract of employment during the period between their being placed on reserve and their retirement on a full old-age pension will not apply in most cases, including the present case, as, due to the length of time that the employees have spent in the public sector, they have already

reached the top pay scale and/or employment grade provided for under the applicable legislation governing promotions?

(b) Is the adoption of a measure such as that provided for under Article 34(1)(e) of Law 4024/2011, eliminating, for employees who are dismissed or who retire from their occupation on qualifying for a full old-age pension, all (or a proportion) of the severance pay provided for under the second paragraph of Article 8 of Law 3198/1955 equal to 40% of the severance pay provided for employees with supplementary insurance (which, in the case of public-sector bodies fulfilling a public service obligation or subsidised by the State, such as the respondent private-law legal entity, is capped at the sum of EUR 15 000), by offsetting it against the reduced salary received during the period on reserve, an appropriate and necessary means of achieving the above aim within the meaning of Article 2(2)(b)(i) and Article 6(1)(a) of Directive 2000/78, bearing in mind that the aforesaid staff would otherwise have received that reduced severance pay under the aforesaid applicable labour legislation irrespective of whether they resigned or were dismissed by the body in which they were employed?'

Consideration of the questions referred

20 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 2 and Article 6(1) of Directive 2000/78 must be interpreted as precluding national legislation under which public-sector workers who, during a given period, fulfil the conditions for drawing a full pension are placed under a labour reserve system until the termination of their contract of employment, something which entails a reduction in their pay, the loss of potential advancement and the partial or even total cancellation of the severance pay to which they would have been entitled on termination of their employment relationship.

21 In order to answer those questions, it is necessary to ascertain whether the legislation at issue in the main proceedings comes within the scope of Directive 2000/78 and, if so, whether it establishes a difference in treatment on grounds of age and whether such a difference may be justified in the light of Article 6(1) of that directive.

22 First, with regard to the question whether the legislation at issue in the main proceedings comes within the scope of Directive 2000/78, it is apparent both from its title and preamble and from its content and purpose that that directive seeks to lay down a general framework in order to guarantee equal treatment 'in employment and occupation' to all persons, by offering them effective protection against discrimination on one of the grounds covered by Article 1, which include age (judgment of 2 April 2020, *Comune di Gesturi*, C-670/18, EU:C:2020:272, paragraph 20 and the case-law cited).

23 In addition, pursuant to Article 3(1)(c) of Directive 2000/78, that directive applies, within the limits of the areas of competence conferred on the European Union, 'to all persons, as regards both the public and private sectors, including public bodies', in relation to 'employment and working conditions, including dismissals and pay'.

24 Under the legislation at issue in the main proceedings, workers bound by an employment relationship governed by private law and of indefinite duration with employers in the broader public sector who, over a particular period, satisfied the conditions for receiving a full pension were placed under a labour reserve system until the termination of their contract of employment. That placement affected the remuneration of those workers and the severance pay to which they would have been entitled on termination of their employment relationship.

25 It follows that the legislation at issue in the main proceedings does come within the scope of Directive 2000/78.

26 As regards, in the second place, the question whether that legislation establishes a difference in treatment on grounds of age for the purposes of Article 2(1) of Directive 2000/78, read in conjunction with Article 1 thereof, it should be noted that, subject to verification by the referring court, it follows from Article 34(3) and (4) of Law 4024/2011 that placement under the labour reserve system was laid down for employees in the broader public sector who satisfied, during the period in question, the conditions for receiving a full pension. Although that paragraph 3 refers, as a condition for full retirement, to 35 years' membership of the social security scheme, it is apparent from the order for reference that, in accordance with Article 10(1) of Law 825/1978, a worker such as AB, who was affiliated to the IKA-ETAM, could claim a full pension subject to the twofold condition that he had completed those 35 years of contributions and had reached the minimum age of 58 years.

27 Since those two conditions are cumulative, the fact that the worker reaches the minimum age of 58 is, as the Advocate General observed in point 37 of his Opinion, an essential requirement for eligibility for a full pension and, consequently, for placement under the labour reserve system during the relevant period. Thus, the application of that system is based on a criterion which is inextricably linked to the age of the workers concerned (see, by analogy, judgment of 12 October 2010, *Ingeniørforeningen i Danmark*, C-499/08, EU:C:2010:600, paragraph 23).

28 It follows that, notwithstanding the fact that the other cumulative condition for claiming a full pension, namely that of having completed 35 years of contributions, must be regarded as an apparently neutral criterion within the meaning of Article 2(2)(b) of Directive 2000/78, the national legislation at issue in the main proceedings contains a difference in treatment which is directly based on the criterion of age within the meaning of the combined provisions of Article 1 and Article 2(2)(a) of that directive (see, by analogy, judgment of 16 October 2007, *Palacios de la Villa*, C-411/05, EU:C:2007:604, paragraphs 48 and 51).

29 With regard, in the third place, to the question whether that difference in treatment may be justified in the light of Article 6 of Directive 2000/78, it should be observed that the first subparagraph of Article 6(1) provides that a difference in treatment on grounds of age is not to constitute discrimination if, within the context of national law, it is objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

30 The Court has frequently held that Member States enjoy a broad discretion in their choice, not only to pursue a particular aim in the field of social and employment policy, but also in the definition of measures capable of achieving it (judgment of 8 May 2019, *Leitner*, C-396/17, EU:C:2019:375, paragraph 41 and the case-law cited).

31 In the present case, it is apparent from the explanatory memorandum to Law 4024/2011, to which both the order for reference and the Greek Government's observations refer, that, in the circumstances of the acute economic crisis facing the Hellenic Republic, the legislation at issue in the main proceedings gives effect to the undertakings given by that Member State to its creditors, consisting in an immediate reduction in wage costs in the public sector in order to achieve savings of EUR 300 million in respect of 2012, as the labour reserve system was to be applied to 30 000 workers in the broader public sector.

32 The Greek Government and the European Commission state that that objective is not purely budgetary, but also concerns the streamlining and reduction of the broader public sector and the restructuring of its services. The Commission stresses that the measures taken in that context of acute economic crisis were intended to prevent the Hellenic Republic from becoming insolvent and thereby to ensure the stability of the euro area through the maintenance of economic, and therefore social, equilibrium.

33 Furthermore, according to the Greek Government, the labour reserve system contributes, in the light of the imperatives linked to the reduction of public expenditure, to employment-policy objectives. Thus, first, in view of the fact that the workers concerned could have been dismissed at any time, the application of that system ensured that a high level of employment would be maintained. Second, the placement of workers close to retirement under that system made it possible to establish a balanced age structure between young civil servants and older civil servants in the broader public sector.

34 In that regard, while budgetary considerations may underlie a Member State's choice of social policy and influence the nature or scope of the employment protection measures which it wishes to adopt, they cannot in themselves constitute an aim pursued by that policy (see, to that effect, judgment of 8 October 2020, *Universitatea 'Lucian Blaga' Sibiu and Others*, C-644/19, EU:C:2020:810, paragraph 53 and the case-law cited).

35 In the present case, it must be observed that the fact that the acute economic crisis facing the Hellenic Republic threatened to cause serious consequences, namely, in particular, the insolvency of that Member State and a loss of stability in the euro area, cannot affect the budgetary nature of the objective of the measures taken, consisting in saving EUR 300 million in respect of 2012, in order to deal with that crisis (see, by analogy, judgment of 2 April 2020, *Comune di Gesturi*, C-670/18, EU:C:2020:272, paragraph 35).

36 It follows that, as the Advocate General observed in point 60 of his Opinion, the objective of reducing public expenditure in accordance with the Hellenic Republic's undertakings towards its creditors, in so far as the legislation at issue in the main proceedings provides, through the introduction of the labour reserve system, for a reduction in the remuneration of the workers concerned and a reduction, or even the abolition, of the severance pay which they would otherwise have been entitled to claim, is liable to influence the nature or scope of the measures of protection of employment themselves, but cannot constitute in itself a legitimate aim under Article 6(1) of Directive 2000/78 justifying a difference in treatment on grounds of age.

37 The fact that the national context is one of acute economic crisis does not authorise a Member State to deprive that provision of practical effect by relying exclusively on an objective other than those relating to social and employment policy which it pursues in order to justify such a difference in treatment (see, by analogy, judgment of 21 December 2016, *AGET Iraklis*, C-201/15, EU:C:2016:972, paragraph 106).

38 That said, as the Advocate General observed in point 62 of his Opinion, the creation, by Law 4024/2011, of the labour reserve system, established within the budgetary constraints to which the Hellenic Republic was subject, appears to meet legitimate employment-policy objectives for the purposes of Article 6(1) of Directive 2000/78.

39 Thus, the choice to place the workers concerned under such a scheme rather than to dismiss them is intended to promote a high level of employment which, in accordance with the first subparagraph of Article 3(3) TEU and Article 9 TFEU, is one of the objectives pursued by the

European Union (see, to that effect, judgments of 16 October 2007, *Palacios de la Villa*, C-411/05, EU:C:2007:604, paragraph 64, and of 2 April 2020, *Comune di Gesturi*, C-670/18, EU:C:2020:272, paragraph 36).

40 Moreover, the Court has previously held that the aim of establishing an age structure that balances young and older civil servants in order to encourage the recruitment and promotion of young people can constitute a legitimate aim of employment and labour market policy (see, to that effect, judgments of 21 July 2011, *Fuchs and Köhler*, C-159/10 and C-160/10, EU:C:2011:508, paragraph 50, and of 2 April 2020, *Comune di Gesturi*, C-670/18, EU:C:2020:272, paragraph 38).

41 In that regard, while it is true that the programme for the reduction of public spending is not intended to promote employment in the broader public sector, the fact remains that the labour reserve system for workers close to retirement has, in the context of that programme, inter alia, been able to avoid the potential dismissal of younger workers in that sector.

42 It follows from the foregoing that, although the labour reserve system forms part of a budgetary policy, it also pursues employment-policy objectives referred to in Article 6(1) of Directive 2000/78, in principle capable of justifying objectively and reasonably a difference in treatment on grounds of age.

43 It is still necessary to ascertain, in accordance with the wording of the provision, whether the means used to achieve those aims are ‘appropriate and necessary’.

44 In that regard, it must be stated that the labour reserve system must be regarded as constituting an appropriate means of achieving the identified employment-policy objectives. First, the decision not to dismiss, but to maintain, workers close to retirement within their employer in the broader public sector clearly contributes to the promotion of a high level of employment. Second, in so far as the introduction of that scheme has, inter alia, made it possible to avoid the dismissal not only of workers close to retirement but also of younger workers, it has contributed to ensuring an overall balanced age structure within that sector.

45 As regards the necessary nature of the measure taken to attain the employment-policy objectives referred to, it must be borne in mind that it is for the competent authorities of the Member States to find the right balance between the different interests involved (judgment of 2 April 2020, *Comune di Gesturi*, C-670/18, EU:C:2020:272, paragraph 43 and the case-law cited). This means, in particular, that that measure must enable such objectives to be achieved without unduly prejudicing the legitimate interests of the workers concerned (see, to that effect, judgment of 12 October 2010, *Ingeniørforeningen i Danmark*, C-499/08, EU:C:2010:600, paragraph 32).

46 Furthermore, as the Advocate General observed in point 76 of his Opinion, the prohibition of discrimination on grounds of age must be read in the light of the right to engage in work recognised in Article 15(1) of the Charter of Fundamental Rights of the European Union. It follows that particular attention must be paid to the participation of older workers in the labour force and thus in economic, cultural and social life. Retaining older workers in the labour force promotes, inter alia, diversity in the workforce. However, the interest represented by the continued employment of those persons must be taken into account in respecting other, potentially divergent, interests (judgment of 2 April 2020, *Comune di Gesturi*, C-670/18, EU:C:2020:272, paragraph 44 and the case-law cited).

47 It is, therefore, necessary to determine whether the national legislature, in exercising its broad discretion in the field of social and employment policy, sought to attain the objectives pursued, which are enjoyed by, among others, younger workers and, by maintaining a high level of

employment, public-sector bodies which, in a context of budgetary constraints, may continue to carry out their tasks and be effective, without unduly prejudicing the interests of workers who have been placed under the labour reserve system.

48 In that regard, it should be noted, in the first place, that, although the placement under that system leads to a significant fall in remuneration and the loss of an opportunity of advancement for the workers affected, they are placed under that system for a relatively short period, namely a maximum of 24 months, at the end of which they benefit from a full pension, that being the fundamental condition for eligibility for that scheme.

49 Furthermore, having regard to the imminent receipt of that pension at the full rate, the reduction, or even abolition, of the severance pay which those workers would have been entitled to claim on termination of their employment does not appear unreasonable in the light of the economic context which gave rise to the legislation at issue in the main proceedings (see, to that effect, judgment of 26 February 2015, *Ingeniørforeningen i Danmark*, C-515/13, EU:C:2015:115, paragraph 27).

50 In the second place, it is apparent from the order for reference that the placement of the workers concerned under the labour reserve system is accompanied by measures for the protection of those workers which have the effect of mitigating the adverse effects of that scheme. Those measures are listed in part (a) of the third question referred by the national court and include the possibility, under certain conditions, of finding alternative occupation in the private sector or pursuing a freelance activity without losing the right to receive the remuneration relating to that scheme, the obligation on the public-sector employer or, failing that, the national employment agency to pay to the relevant insurance fund the social security contributions payable by the employer and the worker until retirement on the basis of the latter's previous remuneration, exemptions from the labour reserve system for vulnerable social groups requiring protection, the option of transferring the staff in question to other vacant posts in public-sector bodies and the adoption of measures concerning the repayment of housing loans taken out by the staff members in question.

51 It follows that the legislation at issue in the main proceedings does not appear to prejudice unreasonably the legitimate interests of the workers affected. Therefore, in a context where there is an acute economic crisis, it does not go beyond what is necessary to achieve the employment-policy objectives pursued by the national legislature.

52 Having regard to all of the foregoing considerations, the answer to the questions referred is that Article 2 and Article 6(1) of Directive 2000/78 must be interpreted as not precluding national legislation under which public-sector workers who, during a given period, fulfil the conditions for drawing a full pension are placed under a labour reserve system until the termination of their contract of employment, which entails a reduction in their pay, the loss of their possible advancement and the partial or even total cancellation of the severance pay to which they would have been entitled on termination of their employment relationship, where that legislation pursues a legitimate employment-policy objective and the means to achieve that objective are appropriate and necessary.

Costs

53 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:

Article 2 and Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as not precluding national legislation under which public-sector workers who, during a given period, fulfil the conditions for drawing a full pension are placed under a labour reserve system until the termination of their contract of employment, which entails a reduction in their pay, the loss of their possible advancement and the partial or even total cancellation of the severance pay to which they would have been entitled on termination of their employment relationship, where that legislation pursues a legitimate employment-policy objective and the means to achieve that objective are appropriate and necessary.

[Signatures]

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* Language of the case: Greek.