



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Bulgaria
Title:	Supreme Court Referral to the Court of Justice of the EU in Disability Case
Date:	9 September 2015
Expert:	Margarita Ilieva
<u>Context</u>	
Issue at stake:	Special Protection Against Dismissal – Public Servants
Ground of discrimination:	Disability
Source:	Judicial decision
Field:	Employment / Public Service
Applicable law:	Labour Code, Article 333 (1.3); Public Servant Act

Content

Case development: On 16 July 2015, the Supreme Administrative Court (SAC), as a last instance, made on its own motion a ruling to refer to the Court of Justice of the EU (CJEU) a set of questions concerning special protection on disability grounds against dismissal of public servants. The complainant in the case, Petya Milkova, a person with a mental disability, was a public servant at the Privatisation and Post-Privatisation Agency (the Agency), a governmental body, until February 2014 when she was made redundant by order of the Agency's executive director. She appealed against this order, claiming that under the Labour Code, Article 333 (1.3), the Agency had a duty to ask the Labour Inspectorate for prior permission to make her redundant because she was a person with disability. The Sofia City Administrative Court (SCAC) held that such special protection under the Labour Code did not apply to her as she was a public servant. The Public Servant Act applied to her and it did not provide for such protection, nor did it refer to the Labour Code in that respect. The SCAC confirmed the redundancy order, and Petya Milkova appealed against its ruling before the SAC.

Considering that public servants with disabilities and employees with disabilities (governed under the Labour Code) were treated differently under the legislation in terms of special protection against dismissal, SAC decided to ask the CJEU whether the Convention on the Rights of Persons with Disabilities (CRPD), the Charter of Fundamental Rights of the EU and Directive 2000/78/EC should be interpreted as allowing such a difference.

Decision of the Court: Ruling No 8771 of 16 July 2015 in administrative case No 12369/2014, Petya Milkova v. the Privatisation and Post-Privatisation Agency.

The SAC formulated the following questions for the CJEU:

1. Does Article 5, section 2 CRPD allow national legislation which only provides for special protection against dismissal for persons with disabilities employed under a labour relationship but not for public servants having the same disabilities?

2. Does Directive 2000/78/EC, in particular, Article 4 allow national legislation which only provides special protection against dismissal to persons with disabilities employed under a labour relationship but not to public servants with the same disabilities?
3. Does Article 7 of Directive 2000/78/EC allow special protection against dismissal to be provided to persons with disabilities employed under a labour relationship but not to public servants with the same disabilities?
4. In case the answers to the first and third questions are negative, should the protection provided for under national legislation to persons with disabilities employed under a labour relationship be also applied to public servants with the same disabilities?

Key points of analysis: The national court is essentially asking whether the supranational bans on *any* discrimination against persons with disabilities mean that national law may not differentiate between persons with disabilities on grounds other than disability, such as who their employer is (public or private) and the nature of their employment contract (labour or public service). Furthermore, the national court wishes to know whether special protection (positive measures) which supranational law does not mandate but the national legislator chooses to provide for may apply to some but not to all persons with a particular disability. The SAC proceeds from the assumption based on CRPD (Article 5 (1-2)) that persons with disabilities are entitled to equal protection without *any* discrimination and to effective protection against discrimination on *all* grounds.

Internet link source:

<http://www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/e8204a2d6e811432c2257e8400317137?OpenDocument> (in Bulgarian) Last accessed 10 September 2015.