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### NEWS REPORT

<b>Country:</b>	Bulgaria
<b>Title:</b>	Supreme Court Ruling After Referral to the Court of Justice of the EU in Disability Case
<b>Date:</b>	24 July 2017
<b>Expert:</b>	Margarita Ilieva
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Specific Advance Protection Against Dismissal – Civil Servants
<b>Ground of discrimination:</b>	Disability
<b>Source:</b>	Judicial decision: Supreme Administrative Court Decision No. 6014 in case No. 1236/2014 (15 May 2017)
<b>Field:</b>	Employment / Civil Service
<b>Applicable law:</b>	Labour Code, Article 333 (1.3); Civil 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 advance protection on disability grounds against dismissal of civil servants. The complainant in the case, Petya Milkova, a person with a mental disability, was a civil servant at the Privatisation and Post-Privatisation Agency (the Agency), a governmental body, until February 2014 when she was made redundant. She appealed against the redundancy 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 advance protection under the Labour Code did not apply to her as she was a civil servant. The Civil 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 Ms. Milkova appealed against its ruling before the SAC.

Considering that civil servants with disabilities and employees with the same disabilities (governed under the Labour Code) were treated differently under the legislation in terms of advance protection against dismissal, SAC asked 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 (Ruling No 8771 of 16 July 2015 in administrative case No 12369/2014, *Petya Milkova v. the Privatisation and Post-Privatisation Agency*).

On 9 March 2017, CJEU ruled in Petya Milkova's case (Case C-406/15), finding that "the distinction made by such legislation between employees with a particular disability and civil servants with the same disability does not appear to be sufficient in the light of the aim pursued by that legislation, all the more so since both those categories of people

with disabilities may be employed by the same administration.” CJEU held that the national court was to establish whether that amounted to an infringement of the principle of equal treatment, taking into account all the relevant rules of national law. In case it did, the court was to re-establish equal treatment which involved granting civil servants with disabilities, disadvantaged by the current system, the same benefits as those enjoyed by employees with disabilities, favoured by that system.

On 15 May 2017, the SAC ruled that national case law preventing civil servants from benefiting from advance disability protection under the Labour Code was to be set aside, and repealed the redundancy order adversely affecting Ms. Milkova (Decision No. 6014 in case No. 1236/2014). SAC found that there was no legitimate reason not to apply advance labour protection to persons with the same disability as employees having the same responsibilities and qualifications who benefit from it under the Labour Code. The court took into account the fact that Ms. Milkova’s job involved no exercise of public power. It held that advance protection against dismissal for persons with disabilities was a positive measure that should apply to the entire group characterised by the relevant disabilities, and not merely to a part of that group. It remanded the case to the lower court which is expected to rule on Ms. Milkova’s claim for compensation.

**Key points of analysis:** The court found legal grounds to apply disability discrimination law in order to abolish a difference of treatment that was in fact not based on disability but on another ground, one not protected under EU law, i.e. the nature of the contract based on which a person with a disability performs a job.

**Analysis:** This is a landmark case where the national court actively sought encouragement from CJEU in order to set aside national law, and accord equal protection before the law to a person with a disability. It is a highly positive development in the national context.

**Internet link source:**

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/885a8cb7a15655bac225810f004c3d1d?OpenDocument> (in Bulgarian). Last accessed 19 July 2017.