



The Estonian legislation imposing an absolute bar on a prison officer remaining in employment when his or her hearing acuity does not meet minimum standards of sound perception without allowing it to be ascertained whether that officer is capable of performing his or her duties is contrary to EU law

That legislation amounts to direct discrimination on grounds of disability

For almost fifteen years, XX was employed as a prison officer by Tartu Prison (Estonia).

During that period, Regulation No 12 of the Government of Estonia on health requirements and medical checks for prison officers and on the form and content of medical certificates entered into force. That regulation prescribes, inter alia, minimum standards of sound perception applicable to those officers and provides that impaired hearing falling below those standards constitutes an absolute medical impediment to the exercise of the duties of a prison officer. In addition, that regulation does not permit the use of corrective aids during the assessment of whether the hearing acuity requirements are met.

On 28 June 2017 the Governor of Tartu Prison dismissed XX following the issue of a medical certificate showing that XX's hearing acuity did not meet the minimum standards of sound perception prescribed in Regulation No 12.

XX brought an action before the Tartu Halduskohus (Administrative Court, Tartu, Estonia), arguing that that regulation constituted discrimination on grounds of disability contrary to, inter alia, the põhiseadus (Constitution). Following the dismissal of that action, the Tartu Ringkonnakohus (Court of Appeal, Tartu, Estonia), by judgment of 11 April 2019, upheld XX's appeal and declared that the decision to dismiss him was unlawful. That court also decided to initiate the procedure for reviewing the constitutionality of the provisions of that regulation before the referring court, the Riigikohus (Supreme Court, Estonia). Noting that the obligation to treat persons who have a disability in the same way as other persons in a comparable situation and without discrimination results not only from the Constitution but also from EU law, that court decided to refer a question to the Court of Justice as to whether the provisions of Directive 2000/78¹ preclude such national legislation.

Findings of the Court

After finding that Regulation No 12 falls within the scope of that directive and amounts to a difference in treatment directly based on disability, the Court examines whether that difference is capable of being justified pursuant to Article 4(1) of Directive 2000/78, according to which Member States may provide that a difference of treatment which is based on a characteristic related to that ground shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate. In so far as it allows a derogation from the principle of non-discrimination, the Court recalls that that provision must be interpreted strictly.

¹ 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).

The Court notes, in particular, that the requirement to be capable of hearing correctly and, therefore, of meeting a particular standard of hearing acuity follows from the nature of the duties of a prison officer, as described by the referring court, and holds that, by reason of the nature of those duties and of the context in which they are carried out, the fact that his or her hearing acuity must satisfy minimum standards of sound perception may be regarded as a 'genuine and determining occupational requirement' within the meaning of Article 4(1) of Directive 2000/78.

As **Regulation No 12 seeks to preserve the safety of persons and the public order, the Court finds that that regulation pursues legitimate objectives.** The Court next examines whether the requirement that it lays down – namely that a prison officer's hearing acuity must meet minimum standards of sound perception, without the use of corrective aids being permitted during the assessment of whether those standards are met, and where failure to meet those standards constitutes an absolute medical impediment to the exercise of his or her duties, resulting in their termination – is appropriate for attaining those objectives and does not go beyond what is necessary to attain them.

As to the appropriateness of that requirement, the Court recalls that legislation is appropriate for ensuring attainment of the objective pursued only if it genuinely reflects a concern to attain it in a consistent and systematic manner. The Court observes, however, that the regulation permits a prison officer to use corrective devices during an assessment as to whether the standards that it lays down in respect of visual acuity are met, whereas that possibility is excluded in respect of hearing acuity.

As regards the necessity of that requirement, the Court recalls that **the failure to meet the standards prescribed by Regulation No 12 is an absolute bar to the exercise of a prison officer's duties, as those standards apply to all prison officers, without any possibility of exemption. In addition, that regulation does not permit an individual assessment of an officer's capacity to fulfil the essential duties of that profession notwithstanding the hearing impairment with which he or she presents.**

The Court also recalls the employer's obligation under Article 5 of Directive 2000/78 to take appropriate measures, in accordance with the needs arising in a specific case, to enable a person with a disability to have access to and participate in employment, unless such measures would impose a disproportionate burden on that employer. In that regard, the Court observes that **Regulation No 12 did not allow XX's employer to conduct, prior to his dismissal, checks in order to consider measures such as use of a hearing aid, exemption, for him, from the obligation of performing tasks requiring him to meet the minimum standards of sound perception prescribed, or assignment to a post which does not require those standards to be reached;** and that no indication is provided as to the possible disproportionate nature of the resulting burden.

That regulation thus appears to have imposed a requirement that goes beyond what is necessary to attain the objectives pursued.

The Court concludes that Article 2(2)(a), Article 4(1) and Article 5 of Directive 2000/78 **preclude national legislation which imposes an absolute bar to a prison officer remaining in employment when his or her hearing acuity does not meet the minimum standards of sound perception prescribed by that legislation, without allowing it to be ascertained whether that officer is capable of fulfilling those duties, where appropriate after the adoption of reasonable accommodation measures** within the meaning of that Article 5.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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