

DISCRIMINATION ON THE GROUNDS OF DISABILITY:

- EU LAW AND THE UNCRPD
- CONCEPTS OF DISABILITY AND REASONABLE ACCOMMODATION

MARIE MERCAT-BRUNS, SCIENCESPO LAW SCHOOL/CNAM, EU EXPERT, EELN NETWORK



1

INTRODUCTION: SOME STATISTICS IN EUROPE AND EU STRATEGY

- Around one quarter of EU citizens aged 16 and over have a self-declared disability that limits their daily activities. The EU and its member states are parties to the United Nations Convention on the Rights of Persons with Disabilities, committing to fostering the equal participation of persons with disabilities in everyday life.
- EU has adopted several strategies aimed at improving the lives of persons with disabilities by supporting the member states, which have primary responsibility for policies in the field of social inclusion, employment and education.
- In 2021, a Eurostat survey showed that around 25 % of people aged 16 and over in the EU self-declared either a severe disability or some disability. This represents around 87 million people, including over 24 million who consider themselves to have one or more severe disabilities.
- Significant differences between member states; for example self-perceived long-standing limitations: from 16.7 % in Malta to 37.1 % in Latvia
- 2021-2030 EU Strategy for the Rights of Persons with Disabilities sets EU objectives and action priorities in:
- Accessibility, citizens' rights, quality of life, equal access and non-discrimination for persons with disabilities.

2

INTRODUCTION: THE 2021-2030 EU STRATEGY

- The 2021-2030 Strategy recognises the existence of a gap in EU law to ensure equal treatment of persons with disabilities in the areas of social protection, healthcare, education and access to goods and services, including housing.
- **Only in the field of employment does the Employment Equality Directive (2000/78) provide an EU legal basis for combating discrimination on grounds of disability.**
- **The 2021-2030 Strategy calls on Member states to enable the adoption of the Commission's proposal for a directive on implementing the principle of equal treatment in the above-mentioned areas (the so-called Equal Treatment Directive beyond employment).**
- **The adoption of this proposed legal text by the Council remains uncertain and no timeframe is specified.**

3

OUTLINE

- I) EU Law and UNCRPD
- II) The Evolving Concept of disability
- III) The Concept of reasonable accommodation: a balancing act
- IV) Indirect Discrimination based on disability
- V) Brainstorming for the future: Inclusion extended to other groups?

4

1) EU ADOPTS THE UNCRPD AND HAS HIGH STANDING IN THE HIERARCHY OF EU NORMS

- 2009: EU adopted its Act of Accession to the UN Convention on the Rights of persons with disabilities (UNCRPD) (Council Decision 2010/48/EC). Annex II of this Decision includes a Declaration of Competence (EU competence in relation to the UN Convention)
- Art.19 TFEU allows the Union to take measures to combat discrimination on various grounds, including disability.
- Art.114 TFEU concerns laws to facilitate the functioning of internal market and harmonize legal frameworks avoiding disparities in national laws to combat discrimination
- EU ratified the Convention on 23 Dec. 2010, but the Act of Accession already had a binding effect/EU institutions and Member States.
- UNCRPD also signed by all Member States. Member States must abide by the UN to enforce the Convention and EU contributes to enforce EU actions under the Convention.
- UNCRPD : high level within EU law: it is below the Treaties but above secondary EU law (regulations and directives).
- So directives must be interpreted consistently with the Convention as its provisions fall within the scope of Community competence. Any conflicting rule may be annulled by the CJEU.
- The accession to the UNCRPD creates an obligation to interpret EU law in manner that is consistent with the Convention (Ring vs Dansk Case C-335/11)
- and that is where CJEU case law and then national judges are key.

5

1) NO DIRECT EFFECT OF THE UNCRPD BUT INDIRECT EFFECT THROUGH CJEU AND NATIONAL CASE LAW

- Direct effect means that the intended beneficiaries of a certain provision can enforce their right directly before national courts.
- The CJEU defines direct effect: it rules that provisions must be unconditional and sufficiently precise to be awarded direct effect. The provisions of the UNCRPD are not unconditional and sufficiently precise (Z v. A Case C- 363/12)
- The Court's reasoning points to the fact that the Convention is directed at States, which prevents it from being directly effective (Art. 4 (1) UNCRPD). But
- International agreements have legal effect in EU legal order and do not require further acts of implementation (regulation or directive Case 181/73 Haegeman)
- Prior adoption of the Employment Equality Directive (Directive 2000/78) / extends the EU prohibition of employment discrimination to disability
- and ratification of the UNCRPD by the EU and Member States:
- So case law interpreting obligations relating to prohibition of disability discrimination and duty to reasonable accommodation is developing within the CJEU, inspired also by communications from UN Committee of the Rights of Persons with disabilities monitoring Member states
- REMINDER UN Process: CRPD Committee has also issued individual communications in response to claims of employment discrimination made by, or on behalf of, a person or group claiming to be victims of a violation of the Convention in some EU Member States
- National courts and equality bodies have also followed suit after preliminary rulings in front of CJEU.

6

I) SCOPE OF UNCRPD: REINFORCEMENT OF DISABILITY RIGHTS

- UNCRPD does not expand disability rights but consolidates essential principles:
- The dignity and individual autonomy of people with disabilities
- The principle of anti-discrimination and accessibility
- The full and effective participation and inclusion of people with disabilities in society.
- The idea of difference and acceptance of persons with disabilities as part of human diversity.
- Equality of opportunity and outcome.
- Inclusion subverts the Equality paradigm: structural barriers, not people, make the difference

7

II) THE EVOLVING CONCEPT OF DISABILITY

- Article 1 of the UNCRPD states that “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”.
- The CRPD has adopted a social model of disability rather than a medical model: disability stems from the interaction of people with their environment (external factors include social biases and architectural designs that pose challenging experiences for individuals with certain long term conditions (linked to health, disorders and injuries....regardless the cause)
- CJEU has defined disability as an impairment that is “long-term” and which, in the field of professional life, “hinders an individual’s access to, participation in, or advancement in employment” (Cases C-335/11 and C-337/11, Ring, Werge; Case C-363/12, Z; Case C-354/13, Kaltoft).
Reminder: Under duty of consistent interpretation, EU secondary legislation must be interpreted in line with UNCRPD.
- For correct judicial interpretation, it is necessary to flesh out even more contours of disability through CJEU case law

8

II) THE EVOLVING CONCEPT OF DISABILITY : FIRST NARROW INTERPRETATION OF DISABILITY CJEU CHACON NAVAS (NOT SICKNESS)

- CJEU ruling on Chacon Navas (2006) -Case C-13/05: **the Court first explains that the concept of disability is not defined in the Directive 2000/78**
- **Limitations of capacity: first definition of disability looks at cause!**
- •The scope of the Directive **cannot be extended by analogy** on other grounds than those listed exhaustively in article1 Directive 2000/78
- Sickness cannot be therefore regarded as such as a ground of discrimination.
- •In order for the limitation to fall within the concept of ‘disability’, it must therefore be probable that it will **last for a long time**.
- •Disability must be understood as referring to **“a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life”** MEDICAL MODEL of DISABILITY
- •The concept of “disability” for the purpose of Directive must be given an **autonomous and uniform** interpretation throughout the Community

9

II) THE EVOLVING CONCEPT OF DISABILITY: EXTENDING PROTECTION TO A PERSON WHO DOES NOT HAVE A DISABILITY BUT CARES FOR A PERSON

- **CJEU Coleman** (2008) -Case C-303/06.
- The prohibition of discrimination is not limited to people who are themselves disabled.
- It also includes less favourable treatment of an employee based on the disability of his child, whose care is provided primarily by the employee.
- No flexible worktime for Coleman who cared for her child as compared to parents with children without disabilities
- **Social Model of disability? The barrier to adequate care is the source of the disability discrimination to protect the outcome**
- An judicial interpretation limiting its application only to people who are themselves disabled is liable to deprive the directive of an important element of its **effectiveness** and to reduce the protection which it is **intended to guarantee**
- The directive, the purpose of which is to combat all forms of discrimination, applies **not to a particular category of person but by reference to the nature of the discrimination (discrimination by association)**.

10

II) EVOLVING CONCEPT OF DISABILITY: WIDER, C-335/11, C-337/11 -HK DENMARK, RING & WERGE

- *Is any person who, because of physical, mental or psychological impairments, cannot or can only to a limited extent carry out his work during in a long period covered by the concept of disability within the meaning of the Directive?*
- The Directive 2000/78 must, as far as possible, be interpreted in a manner consistent with the United Nations Convention on the Rights of Persons with Disabilities.
- Social model of disability prevails:
- The concept of disability must be understood as referring to an hindrance to the exercise of a professional activity, not as the impossibility of exercising such activity. The state of a person with a disability who is fit to work, albeit only part time, is covered by the concept of disability.
- The concept of 'disability' must be understood as referring to a limitation which results in particular from 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.

11

II) EVOLVING CONCEPT OF DISABILITY: WIDER C-335/11, C-337/11 - HK DENMARK, RING & WERGE

- The ruling embraces a **wider concept of disability** than in Chacon Navas :a disability also includes a condition caused by an illness medically diagnosed as curable or incurable where that illness entails a long-term limitation.
- The wider interpretation of the concept is underpinned by the **United Nations Convention on the Rights of Persons with Disabilities** (UNCRPD) ratified by the European Union.
- the CJEU drew on Article 1 of the CRPD to adopt a 'social-contextual' model of disability.

12

II) EVOLVING CONCEPT OF DISABILITY: TYPES OF IMPAIRMENTS THAT AMOUNT TO A DISABILITY KALTOFT V. KOMMUNERNESLANDSFORENING(2015) –CASE C-354/13

- *Must Directive 2000/78 be interpreted as meaning that the **obesity** of a worker can constitute a ‘disability’ within the meaning of that directive?*
- However, obesity can be covered by the concept of disability when the obesity of the worker concerned entails a limitation:
 - •that is a long term one
 - •which results in particular from physical, mental or psychological impairments that
 - •in interaction with various barriers
 - •may hinder the full and effective participation of that person in professional life on an equal basis with other workers
- •This would be the case, in particular, if the obesity of the worker hindered his full and effective participation in professional life on an equal basis with other workers on account of reduced mobility
- •**The concept of ‘disability’ within the meaning of Directive 2000/78 does not depend on the extent to which the person may or may not have contributed to the onset of his disability.”**
- **See also CJEU Ruiz Conejero, DW/Nobel Plastiques**

13

II) EVOLVING CONCEPT OF DISABILITY: INTERACTIONS BETWEEN IMPAIRMENTS AND SOCIETAL BARRIERS IN Z. V A GOVERNMENT DEPARTMENT/ HR RAIL

- **In Z. v A Government Department: 18 March 2014 C-363/12**
- issue of how a particular impairment interacts with societal barriers in giving rise to disability was ignored by the CJEU, which ruled that **the infertility of the worker in question was not classified as a disability** within the meaning of the Directive. This was in spite of the fact that the Court acknowledged that the woman in question had a long-term impairment causing suffering on account of her inability to conceive naturally, and despite the fact that she had been denied employment related benefits, namely access to a paid period of leave following the child’s birth.
- **In contrast, in HR Rail: 10 Feb 2022 C-485/20**
- the CJEU interpreted broadly the interactional element of its definition of disability. This resulted in the worker in question falling within the Court’s definition. **The worker had a health condition which prevented him from being able to carry out the essential functions of the post for which he was recruited**, and the CJEU held that this constituted a limitation resulting from a long-term impairment which, in interaction with various barriers, hindered his full and effective participation in professional life.

14

II) EVOLVING CONCEPT OF DISABILITY: INTERACTIONS BETWEEN IMPAIRMENTS AND SOCIETAL BARRIERS ; DAOUIDI V. BOOTES CASE 395/15

- Someone **temporarily unable to work**, because of a dislocated shoulder, covered by the definition of disability?
- CJEU ruling on Daouidi:
- **The meaning of a long-term limitation**
- In *Daouidi*, the CJEU held that a limitation can be considered long-term if, 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 is likely to be significantly lengthy.**
- The Court emphasised that the assessment of whether a limitation is **'long-term' is an objective one that is 'factual in nature'**; and should be based on current medical and scientific knowledge and data, such as documents and certificates related to the individual's condition.

15

II) EVOLVING CONCEPT OF DISABILITY: INTERACTIONS BETWEEN IMPAIRMENTS AND SOCIETAL BARRIERS :SZPITAL KLINICZNY IM. DRA J. BABIŃSKIEGO, SAMODZIELNY PUBLICZNY ZAKŁAD OPIEKI ZDROWOTNEJ W KRAKOWIE (CASE C-16/19) :SUBGROUPS OF DISABILITY DISCRIMINATION?

- *Does the practice adopted by an employer and consisting in the exclusion of some workers with disabilities form a benefit compared to other workers may constitute discrimination for the purposes of Article 2 of Directive 2000/78?*
- **Direct disability discrimination** may be established if the criterion for less favourable treatment is inextricably linked to disability.
- **The difference in treatment does not have to be in comparison with a non-disabled worker :it can be between disabled workers**, for example where treatment differs according to different types of disability (in terms of particular conditions or severity) or potentially a difference in some other aspect of disability.

The ruling **widens the scope of disability discrimination** since it usually involves comparing the treatment afforded to one worker with another and showing that the treatment is less favorable because of the 'protected characteristic'.

The CJEU now has held that direct discrimination might also be established by comparing treatment between workers with disabilities.

16

III) CONCEPT OF REASONABLE ACCOMMODATION: A BALANCING ACT

- Interactive concept of Disability determines concept of reasonable accommodation
- If disability is conceptualized as the combined result (interaction) of individual functional diversities and the attitudinal barriers of persons and the environment, then the failure for persons to participate in the society must lead to some legal scrutiny of the responsibilities of different actors and institutions when their rights go unfulfilled.
- •Under the UNCRPD, discrimination 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**"(Art.2UNCRPD).

17

III) CONCEPT OF REASONABLE ACCOMMODATIO:ARTICLE 5 OF DIRECTIVE 2000/78

- Article 5 Directive 2000/78
- "In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, **reasonable accommodation** shall be provided.
- This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to ,participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.
- This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned".

18

III) CONCEPT OF REASONABLE ACCOMMODATION: MEASURES AMOUNTING TO AN ACCOMMODATION

- Material measures recognised by the CJEU or an Advocate General as possible reasonable accommodations:
- include :
 - providing information in accessible formats and allowing a worker to use an assistive device (*in casu*, a hearing aid and 'medico-technical' equipment).
 - Organisational measures recognised by the CJEU include reducing working hours /allowing part-time work
 - redistributing tasks / assigning a worker specific tasks or activities in priority to other workers,
 - and appointing a worker to a completely new position.
 - Personal assistance measures acknowledged by the CJEU or an Advocate General as possible reasonable accommodations include:
 - providing the support of a qualified third party.
 - The CJEU has held that the reasonable accommodation duty does not extend to requiring an employer to create a new position which a worker with a disability is able to carry out.

19

III) CONCEPT OF REASONABLE ACCOMMODATION : ABILITY TO DO THE JOB AND REASONABLE ACCOMMODATION

- The CJEU has held that, when assessing whether a worker with a disability is 'competent, capable and available to perform the essential functions of the post concerned', account must be taken of what the worker is able to achieve when a reasonable accommodation has been put in place.

National French case law: absence of reasonable accommodation produces occupational incapacity and cannot be then a justification for dismissal or job reassignment (Quay Branly museum Case).

20

III) CONCEPT OF REASONABLE ACCOMMODATION : A BALANCING ACT? DISPROPORTIONATE BURDEN

- The CJEU understands a ‘reasonable’ accommodation as one that **does not involve the imposition of a disproportionate burden on the employer**. In addition, a number of Advocate Generals have argued that ‘the rationale behind the requirement of reasonable accommodation is to strike a fair balance between the needs of persons with disabilities and those of the employer’.

21

RECENT CJEU 18 JAN 2024 CASE 631/22: NO AUTOMATIC TERMINATION WITHOUT **REASONABLE ACCOMMODATION** OF STAFF WITH DISABILITY UNLESS UNDUE DISPROPORTIONATE BURDEN: LAW IN QUESTION

- A recent decision of the CJEU found that a Spanish social security law breaches EU discrimination rules by providing for automatic termination of the employment of staff with disability.
- Unless there is evidence that no adjustments can be made to accommodate the employee’s disability, the Spanish Courts can no longer approve these automatic terminations.
- The Ministry of Labour is working on revised legislation to incorporate the CJEU’s judgment into Spanish law.
- On 18 January 2024, the CJEU ruled that this automatic termination of an employment contract breaches EU disability discrimination laws. The CJEU ruling allows scope for a termination only where it is impossible to modify or adapt the employee’s role to accommodate their disability.
- As a result of the CJEU ruling, Spanish courts can no longer approve these types of automatic terminations. Employers are now required to explain and provide evidence in court (if necessary) to demonstrate that it is not possible to adjust or adapt the employee’s role to accommodate their ill-health.

22

III) CONCEPT OF REASONABLE ACCOMMODATION: FAILURE TO MAKE A REASONABLE ACCOMMODATION AS A FORM OF DISCRIMINATION?

- While the Directive establishes an obligation to make a reasonable accommodation, it does not explicitly define a failure to make an accommodation as a form of discrimination. This is in distinction to the CRPD, which classifies a denial of a reasonable accommodation as a form of discrimination. Advocate General Rantos, in his Opinion in *HR Rail*, did however favour the latter approach.

23

IV) INDIRECT DISCRIMINATION BASED ON DISABILITY

- In determining whether indirect disability discrimination has occurred under the Employment Equality
- Directive, the CJEU first examines whether there has been adverse treatment that indirectly affects the person concerned. If this is the case, the CJEU ascertains whether the measure provided for under the relevant legislation pursues a legitimate aim and whether it goes beyond what is necessary to achieve the stated aim.

24

IV) INDIRECT DISCRIMINATION BASED ON DISABILITY: ABSENTEEISM FROM WORK

- In *HK Danmark (Ring and Werge)*, the CJEU considered that a measure must be placed in context
- and 'the adverse effects' that it was 'liable to cause for the persons concerned' must be considered.
- The CJEU left it to the referring court to decide on whether the Danish legislature, in pursuing legitimate
- aims, failed to take account of factors relevant, in particular, to workers with disabilities.

- In *Ruiz Conejero*, the CJEU ruled that it is for the referring court to examine whether the national measure
- was 'designed to meet the objective of combating absenteeism from work, without extending to merely
- occasional and sporadic absences'.
- The referring court must take account of all other relevant factors, including the direct and indirect costs borne by companies as a result of absenteeism.
- In *DW/Nobel Plastiques*, the CJEU reiterated that, while a selection criterion for a particular post that took into account a high rate of absenteeism is 'ostensibly neutral', such a criterion potentially gives rise to indirect discrimination if not objectively justified.

25

IV) INDIRECT DISCRIMINATION BASED ON DISABILITY?

- **Striking a reasonable balance between opposing interests**
- In *HK Danmark (Ring and Skouboe Werge)*, the CJEU noted that it is for the referring court to decide
- whether, in striking a reasonable balance between the opposing interests of employees and employers
- regarding illness-related absences, the national legislature omitted to take account of relevant factors
- relating to workers with disabilities.
- **Other measures liable to give rise to indirect discrimination:**
- In *DW/Nobel Plastiques*, the CJEU ruled that other selection criteria influencing a decision to dismiss a
- worker – **such as having productivity below a given rate and a low level of multi-skilling** – were likely to
- give rise to indirect discrimination under the Directive. This is because a worker with a disability is, owing to
- the limitation of their capacity, less likely to meet these requirements than a worker without a disability.

26

V) BRAINSTORMING ON INCLUSION FOR THE FUTURE: BEYOND EQUALITY AND ANTIDISCRIMINATION LAW?

Meaning and scope? A more positive/proactive paradigm? Even for judges finding injunction for change outside positive action and remedies?

Challenges: systemic/structural discrimination, limits of litigation outside of class action

What fields? Only employment?

Bottom up analysis through narratives....Drawing from the potential of people to coconstruct answers

A new paradigm for law? Integration, Social inclusion, equal opportunity/job placement (« insertion »)

What overlap with antidiscrimination law?

(My newbook on inclusion)

27

V) BRAINSTORMING FOR THE FUTURE INCLUSION: WHAT POSSIBLE STAKES FOR JUDGES WITH NEW PARADIGM?

Beyond access to employment/job placement (insertion), **eliminating the barriers to full participation to employment and career development and equal pay.** It means eliminating the modes of resistance/inaction to inclusion. **It is a process not a status oriented approach** (what are sources of equal representation of emancipation? Not just categorizing the sources of disadvantage)

Access to justice, promoting inclusive environments according to a person's talent and potential, a quest for social cohesion in group dynamics **targeting problems common to groups instead of promoting only the difference of people or groups.**

The logic of inclusion requires a perception of inclusion as a **social model of disability** insisting on the need for an environment accessible to all in a disabling society,

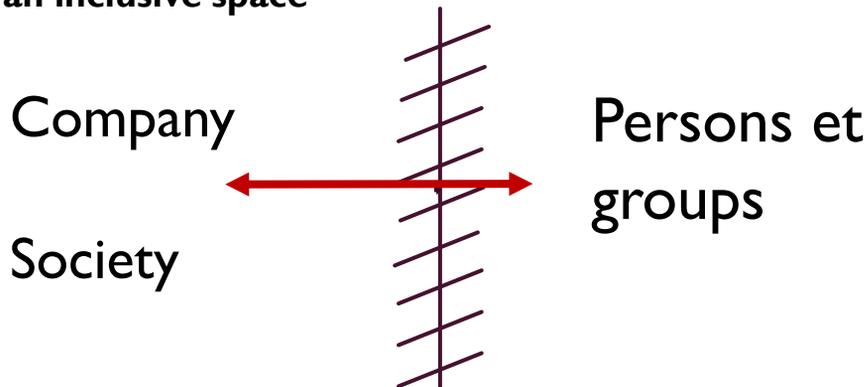
(International Convention for the rights of people with disabilities (CRPD) in the years 70-80)

The need for reasonable accommodations for all workers (disability + age, disability + gender; disability + parenting, disability + race)

28

What is the game changer?

Inclusion/Company or inclusive society: un process or an inclusive space



29

BRAINSTORMING INCLUSION: ONLY A NEW BUZZWORD TO REPLACE DIVERSITY? OR A WAY TO REINVENT THE NATURE OF RULES AND PROCEDURES FOCUSING ON COMMON PROBLEMS AND NOT DIFFERENCE BETWEEN PERSONS/GROUPS

- **Circumventing the limits of antidiscrimination measures: limited to large companies not SME?**
- **Inclusion and indirect positive action** from the bottom up to try to grasp structural inequalities:
- **Six examples of co-constructed indirect positive action to eliminate common barriers to inclusion:**
- 1) **Worktime management** (barriers: care at home, job transfers, mobility, availability, atypical work (part time, seasonal, domestic), long transport)
- 2) **Access to job reassignment, services for promotion:** remove barriers to adjustment period for new hires), lack of career advice, or information (platform for pool of candidates)
- 3) **Codes and company culture 101:** use of artificial intelligence (skills), social networks, dress codes, reasonable use of online work
- 4) **Enlarge to other settings:** chilling effect of hostile environments in public spaces (racial profiling) and help for housing (a continuum for work/like accidents to and from work are covered)
- 5) **Monitoring possible toxic environments** (harassment, micro-agressions, closed work communities/discrimination « by taste » (entre soi), objectifying the risk for all)
- 6) **Mentoring and coaching platform** but only conditioning selection of qualified mentors (and making it attractive /bonus and career advancement), same thing for allies, support groups and witnesses: mechanism as a benefit for all

30

INCLUSION TODAY STILL COMPARES GROUPS: CONFLICTING GROUNDS OR BALANCING GROUNDS BETWEEN AGE AND DISABILITY INTERESTS?

- CJEU 7 December 2023 (request for a preliminary ruling from the Bundesarbeitsgericht – Germany) – J.M.P v AP Assistenzprofis GmbH
 - (Case C-518/22, ¹ AP Assistenzprofis)
- The hiring of a personal assistant to help a person with a disability in everyday life may be limited to persons within the same age range. The ensuing difference of treatment on grounds of age may be justified having regard to the nature of the personal assistance services provided (a Germany company specialising in providing assistance and advice to persons with disabilities)
- – *Directive 2000/78/EC – Article 2(5) – Prohibition of discrimination on grounds of age – United Nations Convention on the Rights of Persons with Disabilities – Article 19 – Living independently and being included in the community – Charter of Fundamental Rights of the European Union – Personal assistance service for persons with disabilities – Job offer stating a minimum age and maximum age of the person to be hired according to the wishes and interests of the disabled person – Justification*

31

CONCLUSION: INCLUSIVE JUSTICE / EFFECTIVE REMEDIES FOR ALL GROUNDS IN LITIGATION (PEOPLE WITH DISABILITIES/ECONOMIC VULNERABILITY). CASE OUTSIDE OF DISABILITY REALM

- In Case C-113/22, *DX v Instituto Nacional de la Seguridad Social (INSS) & Tesorería General de la Seguridad Social (TGSS)*, Judgment of 14 September 2023, the CJEU was required to consider the lawfulness of Spanish administrative measures which continued to apply legislation previously held by the Court to discriminate on the grounds of sex (C-450/18, *WA v Instituto Nacional de la Seguridad Social (INSS)*, Judgment of the Court of 12 December 2019), requiring victims to seek a court order nullifying the impact of this legislation.
- 56 In that context, it should be noted, second, that it must be possible to take into account in terms of financial compensation the expenses, *including the costs and lawyers' fees*, incurred by the member concerned for the purpose of asserting his right to the pension supplement at issue, in so far as those costs were caused by the application to him of discriminatory procedural conditions governing the grant of that supplement...

32

NEW BOOK ON INCLUSION

- Thank you!
- Based on new book: ***Droit de la non-discrimination: de l'égalité à l'inclusion, Société de législation comparée 2024***
- https://legiscompare.fr/ecommerce/fr/home/1252-livre-droit-de-la-non-discrimination-de-legalite-a-linclusion.html?search_query=droit+de+la+non-discrimination&results=214