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Discrimination on the Grounds of Disability

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Disability in the EU
Legal Framework

The Relationship
between EU Law
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Accommodation



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The Language of Disability...

- ✓ **Person-first language** (person/people with disabilities) is used to emphasise that 'disability is just one of an individual's many characteristics - dominant terminology in the global disability rights field, in the CRPD, in EU law, and in countries like the US
- ✓ **Identity-first language** ('disabled person/people') is term used by the proponents of the 'social model of disability'. It is used in the UK and in Ireland to highlight that people are 'disabled' by external barriers – term used in recent Irish studies such as the [IHREC Study on Access to Justice \(2024\)](#)

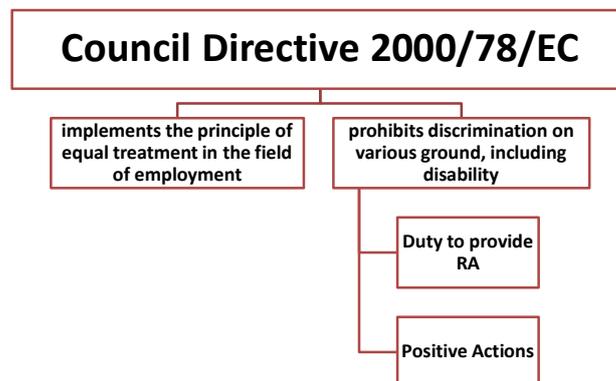


Disability in the EU Legal Framework

The Origins

- The original involvement of the former European Community in the area of disability was limited. The EC initiatives targeted to disabled people took the form of **action programmes intended to exchange information**, or **soft law**.
- The Treaty of Amsterdam introduced Art. 13 EC (now **Art. 19 TFEU**). On the basis of Art. 13 EC, the EU adopted **Council Directive 2000/78/EC**

Council Directive 2000/78/EC



EU Charter of Fundamental Rights

Art. 26

Art. 21

Article 26 of the Charter states that '[t]he Union recognises and respects the **right of persons with disabilities** to benefit from measures designed to ensure their **independence, social and occupational integration and participation in the life of the community**'

Case C-356/12 Glatzel

*"...although Article 26 of the Charter requires the European Union to respect and recognise the right of persons with disabilities to benefit from integration measures, the principle enshrined by that article does not require the EU legislature to adopt any specific measure. In order for that article to be fully effective, **it must be given more specific expression** in European Union or national law. Accordingly, **that article cannot by itself confer on individuals a subjective right which they may invoke as such**" (para. 78)*

EU Disability Law Beyond Anti-Discrimination

The EU concluded the CRPD in 2010

The EU has adopted comprehensive disability strategies

The EU has integrated disability-related standards into its legislation on the internal market, transport, procurement, etc. (*mainstreaming*) & adopted specific legislation



The Relationship between EU Law and the CRPD

The CRPD

- 1st Human Rights Treaty of the 21st century and 1st Human Rights Treaty that the EU has concluded
- Its goal is not to create new rights, but to ensure that all existing rights are equally effective for persons with disabilities
- It embraces a **social-contextual understanding of disability**
- It encompasses all civil, political as well as economic, social and cultural rights

Human Rights Model of Disability



*“The **human rights model** of disability recognizes that disability is a social construct and impairments must not be taken as a legitimate ground for the denial or restriction of human rights. It acknowledges that **disability is one of several layers of identity**. Hence, disability laws and policies must take the diversity of persons with disabilities into account. It also recognizes that human rights are interdependent, interrelated and indivisible.” (CRPD Committee, General Comment No. 6 – 2018)*

Reasonable Accommodation in the CRPD

"...reasonable accommodation" means **necessary and appropriate modifications and adjustments** not imposing a **disproportionate or undue burden**, where needed in a **particular case**, to ensure to persons with disabilities the enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms" (Art 2 CRPD)

Ex Nunc Duty

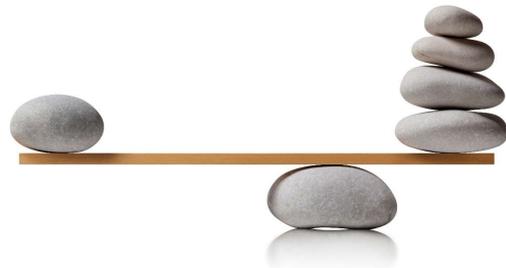
Individualised

Reasonableness is a reference to relevance, appropriateness and effectiveness of the accommodation

The process of seeking reasonable accommodations should be **cooperative and interactive**

Disproportionate or Undue Burden

In *Jungelin v Sweden* the CRPD Committee (albeit only by a majority) held that States Parties enjoy a **margin of appreciation** in determining under what circumstances an accommodation constitutes a disproportionate burden



Reasonable Accommodation in the CRPD Committee Jurisprudence



CRPD Committee, *J.M.V.A v Spain* CRPD/C/29/D/47/2018 (2023)



CRPD Committee, *Richard Sahlin v Sweden*, CRPD/C/23/D/45/2018 (2020)



CRPD Committee, *Michael Lockrey v Australia*, CRPD/C/15/D/13/2013 (2016)



CRPD Committee, *ML Jungelin v Sweden*, CRPD/C/12/D/5/2011(2014)



CRPD Committee, *HM v Sweden*, CRPD/C/7/D/3/2011 (2012)

The CRPD in the EU legal Order

- The CRPD is a **mixed agreement**
- A **mixed agreement** is an international agreement which **falls partly within the competence of the EU and partly within the competence of the Member States**, and therefore includes among its parties the EU and (all or some of) the Member States

The CRPD in the EU Legal Order

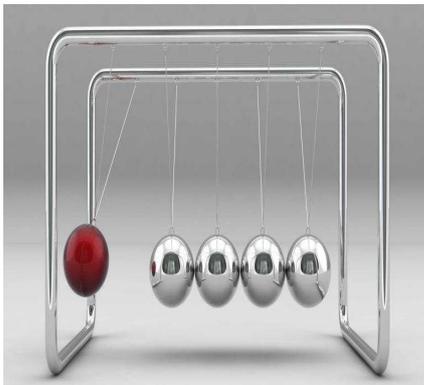
The CRPD forms integral part of EU law, and in hierarchical terms, it is

- inferior to the provisions of the Treaties
- but superior to secondary EU law

Secondary EU law must be interpreted in a manner **consistent** with the CRPD (Joined cases C- 335/11 and C-337/11 *HK Danmark*)

C-397/18 *Nobel Plásticos Ibérica*, paras 29–40; C-485/20 *HR Rail*, para. 38; C-795/19, *Tartu Vangla* para 49; C-824/19, *TC UB* para 59; C-518/22 *AP Assistenzprofis* para 62

The CRPD Lack of Direct Effect



“ it must be held that the **provisions of [the CRPD] are not, as regards their content, provisions that are unconditional and sufficiently precise [...]**, and that they therefore **do not have direct effect in European Union law**. It follows from this that the validity of Directive 2000/78 cannot be assessed in the light of the UN Convention” (Case C-363/12 *Z. v A Government Department*)

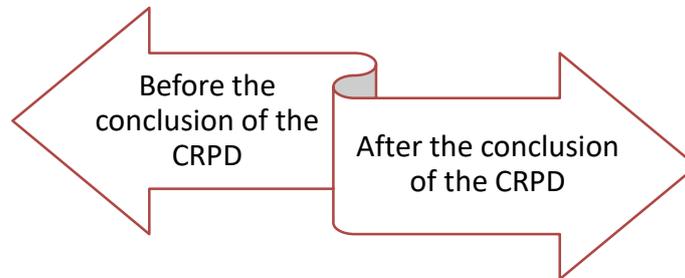
Increasing references to CRPD Committee Jurisprudence

- Opinion AG Rantos Case C-38/24 [*Bervidi*] 13 March 2025 paras 39-40
*“In its Views adopted under Article 5 of the Optional Protocol, concerning **Communication No. 51/2018, of 26 August 2022**, the Committee on the Rights of Persons with Disabilities examined the communication of a person acting in her capacity as caregiver to her daughter and to her partner, both of whom are persons with disabilities. That committee, referring to its General comment No. 6, applied the concept of ‘discrimination by association’ [...]. Even though the European Union has not approved the Optional Protocol to the UN Convention and even though the Committee on the Rights of Persons with Disabilities is not a judicial body, **it is significant that that committee** also adopts, as a consequence, a broad interpretation of the concept of ‘discrimination on the basis of disability’ and explicitly refers to discrimination by association, without limiting that discrimination to direct discrimination”*



The Concepts of Disability and Reasonable Accommodation

The Concept of Disability



Case C-13/05 *Sonia Chacón Navas v. Eurest Colectividades*

*“...the concept of ‘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.”*



Joined cases C-335/11 and C-337/11 *HK Danmark*

“...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...” (para 38)

“...it does not appear that Directive 2000/78 is intended to cover only disabilities that are congenital or result from accidents, to the exclusion of those caused by illness. **It would run counter to the very aim of the directive**, which is to implement equal treatment, **to define its scope by reference to the origin of the disability**” (para 40)

HK Danmark: the Paradigm Shift

HK Danmark ‘**arguably marks a paradigm shift in the Court’s case-law**. In that case, the EU concept of disability was explicitly aligned with that of the UN Convention’ (para 88, Case C-363/12, *Z. v A Government Department*)

The Concept of Disability

Hindrance to Professional life

- Case C-363/12 *Z. v A Government Department*

Obesity as a disability

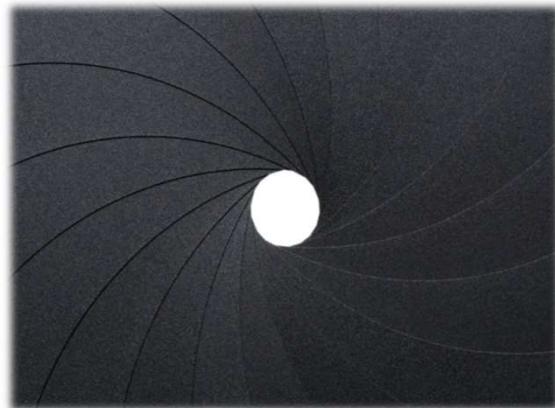
- C-354/13, *Karsten Kaltoft*
- C-270/16 *Ruiz Conejero*

Long term limitation

- C-395/15 *Daouidi*

Social-contextual Concept v Focus on Impairment

- AG Rantos refers to the “social concept of ‘disability’” (Opinion AG Rantos C-485/20, *HR Rail*, para 59 – Opinion AG Rantos Case C-38/24 [*Bervidi*] para 56)
- CJEU often focus on impairments (see eg Case C-795/19, *Tartu Vangla*)



The Concept of Reasonable Accommodation

Article 5

Recital 20 of the Preamble - **Non-exhaustive list** of accommodation measures, which may be physical, organisational and/or educational.

Recital 21 of the Preamble – Guidance on **disproportionate burden**

Recital 17 of the Preamble – Capacity to perform essential functions of the job

Reasonable Accommodation

- *Joined cases C-335/11 and C-337/11 HK Danmark*
- *C-312/11 European Commission v Italy*
- *Case C-397/18 Nobel Plastiques Ibérica SA*
- *Case C-485/20, XXXX v HR Rail SA*
- *Case C-795/19, Tartu Vangla*
- *Case C-824/19 Komisia za zashtita ot diskriminatsia*

Reasonable Accommodation

CJEU Case Law

A finding that the person concerned has a 'disability' **comes before the determination and assessment of the appropriate accommodation measures** referred to in Article 5.

With respect to Directive 2000/78, that **concept must be understood as referring to the elimination of the various barriers that hinder the full and effective participation of persons with disabilities** in professional life on an equal basis with other workers

Material, personal or organisational assistance can be regarded as appropriate accommodations (eg *HK Danmark*; *Komisija za zashtita ot diskriminatsia*).

Denial of reasonable accommodation is a form of discrimination.

Case C-824/19 *Komisija za zashtita ot diskriminatsia*

*“Moreover, Article 5(3) of the UN Convention has an **inclusive purpose promoting equality** for disabled persons and eliminating discrimination, as also shown by Article 27 of that convention, recognising their right to work, on an equal basis with others, particularly the opportunity to earn a living by accomplishing work freely chosen or accepted in a labour market and in a work environment that is open, inclusive and accessible to persons with disabilities” (para 61)*

Case C-795/19, Tartu Vangla

*“Article 2(2)(a), Article 4(1) and Article 5 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 **precluding national legislation which imposes an absolute bar** to the continued employment of a prison officer whose auditory 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 for the purposes of Article 5 of that directive**”*

RA for Caregiver

- “...reasonable accommodation is not restricted to persons with disabilities in the workplace and ... it may also benefit a disabled person who is unable to engage in an occupational activity in the form of **accommodation provided to the worker as a caregiver**. By means of that accommodation, the worker is able to provide the primary care and assistance required by the disabled person, irrespective of his or her age...” (Opinion AG Rantos Case C-38/24 [*Bervidi*] 13 March 2025 para 53)

Practical Challenges at the National Level

Recognition that RA is a flexible notion (e.g. Cass. civ. Sez. Lavoro 09-03-2021 n. 6497)

Variety of RA (e.g adjusting a provision criterion or practice, changing a work post at the same rate pay, working from home, adapted work schedule, redeployment to another branch)

Smart working/ working from home is a RA (Cass Civ 10-01-2025 n. 605)

Guidelines & Reports (e.g. NDA Report <https://nda.ie/publications/employment/employment-publications/reasonable-accommodations-obstacles-and-opportunities-to-the-employment-of-persons-with-a-disability1.html>)



Thank you for your attention!

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