

DISCRIMINATION ON THE GROUNDS OF DISABILITY



**APPLYING
EU ANTI-DISCRIMINATION LAW
SEMINAR FOR LEGAL PRACTITIONERS**

**TALLINN
25-26 SEPTEMBER
2025**

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5 MAIN TOPICS

1. Notion of disability
2. Comparator
3. Access to employment
4. Termination of employment
5. Reasonable accommodation

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Development

2001 – Ad Hoc Committee to draft CRPD is set up

2006 – The UNGA adopts the CRPD

2008 – Entry into force of the CRPD

23 September 2025 Status

Convention

Ratifications/Accessions: 193

Optional Protocol

Ratifications/Accessions: 108

Monitoring Framework

[Committee on the Rights of Persons with Disabilities](#)

[General comment No. 8 \(2022\) on the right of persons with disabilities to work and employment](#)

<https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd>

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- first legally **binding** document – seeks to ensure the equal enjoyment of all human rights by all persons with disabilities (PWD)
- a **paradigm shift** from medical model to **human rights model of disability**
- negotiations: involvement of **highest level of civil society** and disability persons organizations (DPOs)

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UN CRPD AND ITS INTERACTION WITH EU LAW

Convention on the Rights of Persons with Disabilities (CRPD)

- ❑ incorporated into EU law through **Council Decision 2010/48/EC**
- ❑ status of so called “mixed agreement”

EU law

- ❑ Art. 19 TFEU, art. 21 CFR, Directive 2000/78/EC (“**Employment Equality Directive**” or “**EED**”)
- ❑ Policies: Strategy for the Rights of Persons with Disabilities 2021-2030
- ❑ Proposal of so called “**Horizontal Directive**” (protection against disability discrimination beyond employment), not adopted
- ❑ **Other areas**: accessibility of products (Directive EU 2019/882), audio-visual media services (Directive EU 2018/1808), accessibility of the websites and mobile applications of public sector bodies (Directive EU 2016/2102), Passengers rights [2023/0437(COD)], European Disability Card and Parking Card (Directives EU 2024/2841 and 2024/2842).

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THE (NON-) DEFINITION OF DISABILITY IN THE UN CRPD



”

Preamble and
Article 1, para 2
- Purpose

“

«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.»

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LET'S RETURN TO THE ORIGINAL CASE OF JETTE...



Sonia Chacón Navas v Eurest Colectividades SA (2006) [C-13/05](#)

- ❑ Disability is **different** from sickness.
- ❑ A person who has been dismissed by his employer solely on account of sickness **does not fall within** the general framework laid down by Employment Equality Directive.

HK Danmark v Dansk almennyttigt Boligselskab, and HK Danmark v Dansk Arbejdsgiverforening (2013) [C-335/11](#), [C-337/11](#)

- ❑ *“the concept of ‘disability’ must be interpreted as including a **condition caused by an illness** medically diagnosed as curable or incurable where that illness entails 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, and the **limitation is a long-term one.**” (para 47)*

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CRPD COMMITTEE



”

S. C. v. Brazil
[CRPD/C/12/D/10/2013](#)

“

- ❑ Communication declared inadmissible
- ❑ but CRPD Committee **briefly elaborated** on the concept of disability
«the difference between illness and disability is a **difference of degree** and **not a difference of kind**»
«A health impairment which **initially** is conceived of as illness **can develop** into an impairment in the context of disability as a consequence of its **duration or its chronicity.**».

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COMPARATOR



“ situation does not have to be identical, but only comparable “

Petya Milkova v Izpalnitelen direktor na Agentsiata (2017) [C-406/15](#)

□ „the comparison of the situations must be based on an analysis focusing on all the rules of national law governing, on the one hand, the positions of **employees with a particular disability** and, on the other, the positions of **civil servants with the same disability**, as they result from the relevant domestic provisions applicable to the present case“ (para 58)

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ACCESS TO EMPLOYMENT



“ the question must have an objective reason “

Germany, Federal Labour Court, 26 June 2014, [8 AZR 547/13](#)

- being questioned about the limitations resulting from a disability stated in the application documents **does not establish facts from which it may be presumed** that there has been discrimination as long as the intention of the employer is to **fulfil the obligation to provide reasonable accommodation**
- „when **assessing such question** in the context of disability, it must be ensured that the **achievement of the objective pursued by EED is not impaired**“

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GENUINE AND DETERMINING OCCUPATIONAL REQUIREMENT

Article 4, para 1 EED

*Member States may provide that a **difference of treatment** which is based on a characteristic related to disability **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**.*

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” the hearing acuity requirement went beyond what was necessary to achieve the legitimate aim “

XX v Tartu Vangla (2021), [C-795/19](#)

- the requirement relating to hearing acuity constitutes a „**genuine and determining occupational requirement**“
- the need to ensure the operational ability and proper functioning of the prison service, the protection of persons and public order – **legitimate aim**
- state shall achieve this aim in a **coherent** and **systematic manner**

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ACCESSIBILITY AND REASONABLE ACCOMODATION

General Comments no. 2 and no. 6



ACCESSIBILITY	REASONABLE ACCOMODATION
Group related	Tailored to the individual
Ex ante duty	Ex nunc duty
Must be implemented gradually but unconditionally	Must be implemented if it does not entail a disproportionate burden on the duty bearer

Both General Comments of UN CRPD Committee are available at <https://www.ohchr.org/en/hrbodies/crpd/pages/gc.aspx>

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REASONABLE ACCOMMODATION (RA)



Definition – Article 5 EED

- „an appropriate measure to enable a person with a disability to have access to, to participate or to advance in employment“
- Denial to provide RA is defined as discrimination (requirement of UN CRPD).
- Recital 17 and 20 – important interpretation guidelines
- RA must be distinguished from
 1. accessibility standards - Art. 4 (f) and 9 CRPD, universal design
 2. positive action - Art. 7 EED

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REASONABLE ACCOMMODATION (RA)



Disproportionate burden (recital 21 and article 5 EED)

Recital 21

Account should be taken in particular of

- the **financial and other costs** entailed,
- the **scale and financial resources** of the organisation or undertaking and
- the **possibility of obtaining public funding** or any other assistance.

plus

Article 5

„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.“

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EXAMPLES OF REASONABLE ACCOMMODATION



- Provision of a personal assistant in the workplace.
- Presence of a dog with special training in the workplace.
- Part-time.
- Flexible working hours.
- More frequent or longer breaks from work.
- Teleworking.
- Taking the employee out of direct contact with clients (called "back office").
- Purchasing special software or electronic magnifiers to read documents.
- Exempting the employee from making telephone calls (for a person with a hearing impairment).
- Reassigning the employee to a workplace closer to his/her home.
- A day of sick leave to maintain a compensatory device.

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EXAMPLES FROM CJEU CASE-LAW Reasonable accommodation measure



**HK Danmark v
Dansk almennyttigt
Boligselskab
(2013)**

[C-335/11, C-337/11](#)



**DW v Nobel
Plásticos Ibérica
SA**

(2019)

[C-397/18](#)



**XXXX v
HR Rail SA
(2022)**

[C-485/20](#)

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PRACTICAL CHALLENGES



[Equinet Discussion
Paper](#)
2021
[Annex](#)
(very useful tool)



[Court practices
regarding disability
discrimination
\(including
reasonable
accommodation\)](#)
2024



[Reasonable
accommodation at
work](#)
[Guidelines and good
practices](#)
2024

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PRACTICAL CHALLENGES

interesting national case law I



Employee disclosed disability only when addressing unsatisfactory work performance

- ❑ Spain, Constitutional Court, 15 March 2021, [Nº 51/2021](#)

Constructive knowledge*

- ❑ RA is often but not necessarily requested by the person who requires access.
- ❑ RA requires the duty bearer to enter into dialogue with the individual with a disability.
- ❑ RA also applies in situations where a **potential duty bearer should have realized that the person in question had a disability** that might require accommodations to address barriers to exercising rights (**constructive knowledge**).

*UN CRPD Committee General Comment No. 6 (2018)

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PRACTICAL CHALLENGES

interesting national case law II



*„The process of seeking reasonable accommodation should be cooperative and interactive and aim to strike the best possible balance between the needs of the employee and the employer.“**

The employer knew of the disability but failed to take reasonable accommodation

- ❑ Belgium, Labour Court Brussels, 20 February 2018, [2016/AB/959](#)

Although the employer adopted a reasonable accommodation, it was not sufficiently effective

- ❑ Norway, Equality and Anti-Discrimination Tribunal of Norway, 9 September 2013, [Case 11/2013](#), A vs. B Company

Employer refused reasonable accommodation on grounds of undue burden

- ❑ Sweden, Labour Court, Södertörn University, Case A 146/16, [Judgement 51/17](#)
- ❑ Slovakia, the Regional Court in Bratislava, 27 August 2019, [8 CO/232/2018](#)

*UN CRPD Committee, V.F.C. v. Spain, point 8.7

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SET OF SOFT RECOMMENDATIONS FOR EMPLOYEES



” Be open and communicate your needs so you can work effectively.

“

- communicate openly with your employer
- provide evidence that your specific needs arise from the limitations caused by your disability
- suggest that some measures may only work for a certain period (a 'trial run')
- meet the employer again to assess how the measure has worked in practice
- tell the employer about resources that could cover the costs
- put the employer in touch with NGOs that specialize in particular disability

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SET OF SOFT RECOMMENDATIONS FOR EMPLOYERS



” Explain to employees without disabilities that RA means substantive equality.

“

- inform all your employees that you are prepared to provide reasonable accommodation
- give practical examples and clearly describe how employees can request them
- include information about reasonable accommodation in job offers and onboarding training
- pay special attention to certain categories of employees (sick leave or returning to the workplace after a long break for health reasons)
- remember that every employee with a disability is different, adjustments should be discussed on individual basis
- work with reliable partners (NGO, trade unions, Employment Office, occupational health care provider)

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CONCLUDING REMARKS

- ❑ The CRPD contains a **human rights model of disability**.
- ❑ EU law protects people with disabilities against **discrimination only in the field of employment**.
- ❑ **The CJEU** has developed case law on **the definition of disability** and other related issues (determination of comparator, reasonable accommodation, discriminatory conditions for termination of employment).
- ❑ The obligation to take **reasonable accommodation measures** towards employees with disabilities is an **essential tool for their inclusion** in working life (and retention and continuance of existing employment).
- ❑ **Denial** of reasonable accommodation is a **form of discrimination**.
- ❑ Reasonable accommodation may take **different forms**. EU law contains non-exhaustive list of possible measures.
- ❑ The adoption of the measure should be the result of a **dialogue** between the employee and the employer.

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LIST OF CASE LAW CJEU, UN CRPD COMMITTEE

Notion of disability

- ❑ [C-13/05](#), Sonia Chacón Navas v Eurest Colectividades SA, ECLI:EU:C:2006:456
- ❑ [C-335/11 and C-337/11](#) HK Danmark (Ring and Skouboe Werge), ECLI:EU:C:2013:222
- ❑ S. C. v. Brazil, [CRPD/C/12/D/10/2013](#)
- ❑ [C-363/12](#), Z. v A Government Department and The Board of management of a community school EU:C:2014:159
- ❑ [C-354/13](#), Fag og Arbejde (FOA) v Kommunernes Landsforening (KL) (Kaltoft), ECLI:EU:C:2014:2463.
- ❑ [C-395/15](#), Mohamed Daouidi v Bootes Plus SL, Fondo de Garantía Salarial, Ministerio Fiscal, EU:C:2016:917

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LIST OF CASE LAW CJEU, ECHR, UN CRPD COMMITTEE



Comparator

- ❑ [C-406/15](#), Petya Milkova v Izpalnitelen direktor na Agentsiata za privatizatsia i sledprivatizatsionen control, ECLI:EU:C:2017:198
- ❑ [C-16/19](#), VL v Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie, ECLI:EU:C:2021:64
- ❑ Popović and others v. Serbia (2020), applications nos. [26944/13 and 3 others](#)

Access to employment

- ❑ Liliane Gröninger et al. v. Germany, [CRPD/C/D/2/2010](#)

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LIST OF CASE LAW CJEU



Termination of Employment

- ❑ [C-303/06](#), Coleman v. Attridge Law, ECLI:EU:C:2008:41
- ❑ [C-270/16](#), Carlos Enrique Ruiz Conejero v Ferroservicios Auxiliares SA and Ministerio Fiscal, ECLI:EU:C:2018:17
- ❑ [C-397/18](#), DW v Nobel Plásticos Ibérica SA, ECLI:EU:C:2019:703
- ❑ [C-5/24](#), P.M. v S. Snc [Pauni], ECLI:EU:C:2025:689

Genuine and Determining Occupational Requirement

- ❑ [C-795/19](#), XX v Tartu Vangla, ECLI:EU:C:2020:961
- ❑ [C-824/19](#), TC, UB v Komisia za zashtita ot diskriminatsia, VA, ECLI:EU:C:2021:862

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Reasonable accommodation

- [C-485/20](#), XXXX v HR Rail SA, ECLI:EU:C:2022:85
- [C-631/22](#), J.M.A.R. v Ca Na Negreta SA, ECLI:EU:C:2024:53
- [C-38/24](#), G. L. v AB SpA [Bervidi], ECLI:EU:C:2025:690
- Marie-Louise Jüngelin v Sweden, [CRPD/C/12/D/5/2011](#)
- V.F.C. v Spain, [CRPD/C/21/D/34/2015](#)
- J. M. v Spain, [CRPD/C/23/D/37/2016](#)
- M.R. i V. v Spain, [CRPD/C/26/D/48/2018](#)
- J.M.V.A. v Spain, [CRPD/C/29/D/47/2018](#)
- Richard Sahlin v Sweden, [CRPD/C/23/D/45/2018](#)

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Convention on the Rights of Persons with Disabilities (CRPD)

- Full text of the Convention
- Guiding Principles of the Convention
- Different language versions, Sign Language, Easy read versions
- CRPD Training Guide

The Committee on the Rights of Persons with Disabilities (CRPD)

- [Concluding observations](#)
- [General Comments](#)
- [Latest jurisprudence](#)

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INFORMATION SOURCES II



Persons with disabilities and the European Convention on Human Rights

- ❑ [Facsheet \(last update October 2024\)](#)

European Committee of Social Rights

- ❑ [Digest of the case law of the European Committee of Social Rights \(version June 2022\)](#)
- ❑ [Collective complaints](#)

Equinet – European Network of Equality Bodies

- ❑ [Discussion Paper: Reasonable accommodation for persons with disabilities \(2021\)](#)

Job Accommodation Network (USA)

- ❑ [A to Z lists \(by disability/limitation/work-related function/topics/accommodation\)](#)

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RECENT PUBLICATIONS (2023-2024)



- ❑ WADDINGTON, Lisa, BRODERICK, Andrea. [Court practices regarding disability discrimination, including reasonable accommodation, at EU and Member State level, and in light of the UN CRPD](#). [online] Luxembourg: Publications Office of the European Union, 2024. ISBN 978-92-68-11371-4
- ❑ WADDINGTON, Lisa. [Striving for an inclusive labour market in Europe](#). [online] Luxembourg: Publications Office of the European Union, 2023. ISBN 978-92-68-04424-7
- ❑ EUROPEAN COMMISSION. [Reasonable accommodation at work. Guidelines and good practices](#). [online] Luxembourg: Publications Office of the European Union, 2024. ISBN 978-92-68-16402-0
- ❑ LULLI, Roberta et al. [Digital Skills, Accommodation and Technological Assistance for Employment](#). [online] Brussels: European Disability Forum, 2024.

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THANK YOU FOR YOUR ATTENTION!



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