

Discrimination on the Basis of Disability

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Legal Sources of Protection against Discrimination on Grounds of Disability in EU Law

Disability as a prohibited ground of discrimination was introduced by the Treaty of Amsterdam in 1999 → Article 19, paragraph 1 of the TFEU

The Charter of Fundamental Rights of the EU (Article 21 and Article 26)

The UNCRPD

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Framework Directive 2000/78)

Case-law of the Court of Justice of the EU

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UNCRPD

- Adopted by the UN General Assembly in December 2006; entered into force in May 2008; it is widely accepted
- **A human rights law approach to the concept of disability**
- **Discrimination on the basis of disability** - 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** (Article 2).
- **The first international source of law in the field of human rights protection that is open for signature by regional integration organizations as well** (Article 42)

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The Relationship between EU Law and the UNCRPD

- It follows from Decision 2010/48 that the EU has approved the UN Convention. The provisions of that convention are thus, from the time of its entry into force, an integral part of the European Union legal order (*HK Danmark*, paragraph 30)
- Binding on the EU since 22 January 2011
- „... the primacy of international agreements concluded by the European Union over instruments of secondary law means that those instruments must as far as possible be interpreted in a manner that is consistent with those agreements ...” (*HK Danmark*, paragraph 29)
- Only on the basis of unconditional and sufficiently precise provisions of the UNCRPD can the validity of acts of EU law be reviewed; the UNCRPD provisions that do not meet this requirement do not have direct effect in EU law (*Z v. A Government Department*, paragraphs 85 and 90)

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Specific Features of Protection against Discrimination on Grounds of Disability in EU Law

- There is no directive exclusively dedicated to the protection against discrimination on the basis of disability; only the so-called Framework Directive 2000/78 exists
- Asymmetrical approach to protection (the Framework Directive guarantees certain rights exclusively to persons with disabilities)
- On grounds of disability, EU law prohibits discrimination only in the field of employment and occupation
- Critical examination of the comparator (*Milkova; VL v. Szpital Kliniczny*). Possibility of comparing persons with disabilities (*VL v. Szpital Kliniczny*).

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The Concept of Disability (I)

Framework Directive 2000/78 does not provide a definition

The definition of a person with a disability is set out in Article 1, paragraph 2 of the UNCRPD: *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.*

Disability in the case-law of the Court of Justice of the EU: *a limitation which results in particular from long-term 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.*

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The Concept of Disability(II) – Case-law of the Court of Justice of the EU

An illness does not amount to a disability(*Chacon Navas*);

Obesity as a disability(*Kaltoft*);

The inability to have a child by conventional means is not a disability within the meaning of the Framework Directive(*Z v. A Government Department*);

The incapacity of the person concerned does not display a clearly defined prognosis as regards short-term progress or the fact that this incapacity is likely to be significantly prolonged before that person has recovered - the evidence that such a limitation of capacity is long-term (*Daouidi*);

Extending protection to working parents of children with disabilities (*Colman; Bervidi*)

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The Concept of Reasonable Accommodation in the UNCRPD (Article 2)

A broad definition of reasonable accommodation in the UNCRPD: (material and organizational measures)– „means *necessary and appropriate modification 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”

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The Concept of Reasonable Accommodation in the Framework Directive (Article 5)

„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.”

The Directive does not specify that failure to provide reasonable accommodation constitutes discrimination.

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The Concept of Reasonable Accommodation in the Case-law of the Court of Justice of the EU

Part-time work (*HK Danmark*)

A hearing aid for a prison officer (*XX v. Tartu Vangla*)

Obligation to reassign to another vacant post as a form of reasonable accommodation (*XXXX v. HR Rail SA*)

The right of an employee who does not herself have a disability but cares for a child who has a disability to reasonable accommodation – work in the morning shift (*Bervidi*)

The post retention period does not constitute reasonable accommodation (*Pauni*)

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Conclusion

- On grounds of disability, EU law provides protection against discrimination only in the field of employment and occupation (the need to extend protection to other fields of social life)
- The role of the Court of Justice of the EU in protection against discrimination on grounds of disability:
 - A particularly developed concept of reasonable accommodation
 - Extended personal scope of the Framework Directive – employees who do not themselves have a disability but care for children with disabilities are also protected from indirect discrimination on grounds of disability in the field of employment and occupation

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Relevant case law of the Court of Justice of the EU on discrimination on the grounds of disability

Chacon Navas (C-13/05), 2006

Coleman (C-303/06), 2008

HK Danmark (C- 335/11 and C-337/11), 2013

Z. v A Government Department (C-363/12), 2014

Kaltoft (C-354/13), 2014

Daouidi (C-395/15), 2016

Milkova (C- 406/15), 2017

Ruiz Conejero (C-270/16), 2018

DW v. Nobel Plastiques Ibérica SA (C-397/18), 2019

VL v. Szpital Kliniczny (C-16/19), 2021

XX v. Tartu Vangla (C-795/19), 2021

XXXX v. HR Rail SA (C-485/20), 2022

Ca Na Negreta (C-631/22), 2024

Randstad Empleo (C-649/22), 2024

Pauni (C-5/24), 2025

Bervidi (C-38/24), 2025

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