

DISCRIMINATION ON THE GROUNDS OF DISABILITY



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

**PRAGUE
19-20 MARCH
2026**

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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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NOTION OF DISABILITY



Jette's case

- employed by a housing association, absent on several occasions from 6 June to 24 November
- the medical certificates states - „constant lumbar pain which could not be treated“
- no prognosis can be made as regards the prospect of returning to full-time employment
- Jette is dismissed by letter with reference to the existing national law – her illness was too long (more than 120 days)

Jette files an action and claim **disability discrimination**.

Her employer **disputes** that the Jette's state of health is covered by the concept of 'disability'.

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POLL QUESTION NO. 1



Based on the facts of this case, might Jette qualify as a person with a disability?

- a. Yes
- b. No

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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)

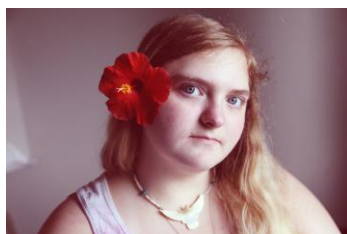
- ❑ incorporated into EU law through **Council Decision 2010/48/EC**
- ❑ status of so called “mixed agreement”

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

Petya's case

- civil servant with the mental illness
- occupies the post of 'junior expert' in the 'control of privatisation contracts' unit of the Agency (public sector)
- number of posts within the Agency is reduced from 105 to 65, her employment relationship is terminated
- prior authorisation of the labour inspectorate is only required with regard to dismissal of non-civil-service employees

Petya challenges the termination of her contract claiming **disability discrimination**.

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POLL QUESTION NO. 2

Who is a person in a comparable situation for the purpose of determining whether discrimination has occurred?

- a. Civil servant without disability
- b. Employee with disability
- c. Employee without disability

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” 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)

David's case

- graduated from university, specifically in business communication and administration field
- applied for the **position** of 1/ community manager and 2/ start-up consultant at the university, mentioned that he has a **severe disability** that does not affect his mental or social skills
- the employer asked him about the **nature of his disability** and **related limitations** (including the need to use stairs)

David **was not successful** in the selection process.

He brought a claim for **disability discrimination** before an employment tribunal.

POLL QUESTION NO. 3

Can an employer ask a job applicant about his or her disability during a job interview?

- a) Yes, if the disability is visible.
- b) Yes, if the applicant discloses the disability in the communication before the selection process begins.
- c) No, this is sensitive personal information.

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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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Miron's case

- ❑ works for the **Prison Service** for 12 years
- ❑ dismissed from service after the employer found, following a medical examination, that Miron's **hearing acuity** did not meet the minimum thresholds under national legislation
- ❑ the use of **compensatory aids** (hearing aids) during the medical check is not possible (but use of lenses is allowed)
- ❑ thresholds apply to **all members** of the prison service

Miron contests his dismissal and claims **disability discrimination**.

Prison service alleges that hearing acuity is essential for the performance of the job and refers to **genuine and determining occupational requirement**.

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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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POLL QUESTION NO. 4

In Miron's case the court shall examine whether

- a. the use of **compensatory aids** during the medical examination is allowed
- b. thresholds for hearing acuity apply to **all members** of the prison service
- c. the employer considered **placing him** in a position that **did not require** him to meet minimum hearing acuity thresholds

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TERMINATION OF EMPLOYMENT



” 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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COSTS AND BENEFITS OF WORKPLACE ACCOMMODATIONS



[Survey conducted by U. S. Job Accommodation Network \(JAN\) \(2025\)](#)

Respondents

Survey sent to **26,028 employers** (2019–2024)

- **5,406 employers** responded
- **1,425 employers** provided data on accommodation costs

Costs of workplace accommodations

- **61%** of accommodations: **no cost**
(e.g. schedule adjustments, changes to internal policies)
- **33%**: **one-time cost**, median **USD 300**
- **6%**: **ongoing cost**, median **USD 2,400 per year**

Funded by U.S. Department of Labor – Office of Disability Employment Policy

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COSTS AND BENEFITS OF WORKPLACE ACCOMMODATIONS



Reported benefits for employers

- **85%**: retention of a valuable employee
- **52%**: increased productivity
- **48%**: avoided recruitment and training costs
- **47%**: improved employee attendance

additional benefits: improved workplace morale, safety, and teamwork

Key takeaway



Workplace accommodations are **most often cost-free or low-cost**, while generating **substantial organisational benefits**.

Funded by U.S. Department of Labor – Office of Disability Employment Policy

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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

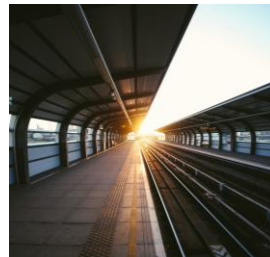
Reasonable accommodation measure



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



**DW v Nobel
Plastiques Ibérica
SA
(2019)**
[C-397/18](#)



**XXXX v
HR Rail SA
(2022)**
[C-485/20](#)

INFORMATION SOURCES



**Reasonable accommodation for persons with disabilities
ECtHR and CJEU case-Law**
(Joint factsheet) 16/06/2025

The Factsheet has been prepared by the Registry of the European Court of Human Rights ("ECtHR") and the European Agency for Fundamental Rights, as part of a collaborative effort to highlight opportunities to interact and work with European Court of Justice and that of the European Commission on Human Rights ("ECtHR" or "the Convention") inter alia.

Introduction

Reasonable accommodation for persons with disabilities has been defined in Article 1 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) as "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 in the political, economic, social, cultural, civil or any other field".

Both the Court of Justice of the European Union ("CJEU") and the ECtHR have established that definition and have considered that a failure to fulfil the obligation to take appropriate measures for the reasonable accommodation of persons with disabilities amounts to discrimination (breach).

The substance of this obligation can take several forms. Both European courts have held that it is not their task to define the measures to be implemented, the measures to be adopted nor the form which the reasonable accommodation should take. It is considered that national courts are better placed to do so.

[Reasonable accommodation for persons with disabilities ECtHR and CJEU case-Law \(Joint Factsheet\)](#)
2025

**EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME**

[Guide on the case-law of the European Convention on Human Rights \(Rights of persons with disabilities\)](#)
2025

JAN
Job Accommodation Network

Employers Individuals Publications

Looking for free training on workplace accommodation topics?
Register for the next JAN webcast.

March 12, 2024
2:00-3:00 p.m. Eastern
[Beyond What You Can See: Understanding and Accommodating Workers with Nonapparent Disabilities](#)
Discover how to navigate accommodation requests and implement effective job for workers with nonapparent disabilities.
Register for the Live Event or Record

[JAN Job Accommodation Network](#)
U.S.



Equinet Discussion Paper
2021
Annex
(very useful tool)



Court practices regarding disability discrimination, including reasonable accommodation, at EU and Member State level, and in light of the UN CRPD
including summary

Court practices regarding disability discrimination (including reasonable accommodation)
2024



Reasonable accommodation at work
Guidelines and good practices
2024

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)

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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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 Plastiques 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 Komisija za zashtita ot diskriminatsia, VA, ECLI:EU:C:2021:862

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](#)

[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](#)

Persons with disabilities and the European Convention on Human Rights

- [Facstheet \(last update October 2024\)](#)

European Committee of Social Rights

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

THANK YOU FOR YOUR ATTENTION!



ombudsman
Public Defender of Rights



Office of the Public Defender of Rights and Defender of Children's Rights, Brno, Údolní 39, 602 00, Czech Republic, <https://www.ochrance.cz/en/>