Reasonable Accommodation as a Gateway to the Right to Work: Comparative Perspectives

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CRPD and EU Employment Equality Directive

National laws

Concluding Remarks
CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES
""Reasonable accommodation" 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"
State Parties must ensure that reasonable accommodation is provided to persons with disabilities in the workplace” (Art. 27(1)(i) CRPD)
Reasonable accommodation is unequivocally incorporated into the non-discrimination principle
Reasonable Accommodation

Extend to all people with disabilities

Individual-oriented nature of the duty
“Reasonableness” is understood as the result of a contextual test that involves an analysis of the relevance and the effectiveness of the accommodation, and the expected goal of countering discrimination. The availability of resources and financial implications is recognized when assessing disproportionate burden.”
In *Jungelin v Sweden* (Communication No. 5/2011), the CRPD Committee stated that States Parties *enjoy a margin of appreciation* when assessing the reasonableness and proportionality of accommodation measures.
THE EMPLOYMENT EQUALITY DIRECTIVE (DIR. 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 provide training for such a person, unless such measures would impose a disproportionate burden on the employer. When this burden is, to a sufficient extent, remedied by existing measures as an element of disability policy in the Member State, it should not be considered disproportionate”
“…the concept of ‘disability’ within the meaning of Directive 2000/78 must be understood as referring to 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 (HK Danmark, C-335/11 and C-337/11)”
Recital 20
Disproportionate Burden

- costs
- scale and financial resources of the undertaking
- possibility of obtaining public funding
Reasonable Accommodation in National Laws
Reasonable accommodation
Reasonable Accommodation in National Laws
Exceptions for Military Services

- Only the UK, Greece and Cyprus have entered reservations against Article 27 CRPD in respect of the armed forces.

- Armed forces exemptions in the other countries are inconsistent with the obligations of those countries as States Parties to the CRPD.
Personal scope

No legislative definition of disability

judicially elaborated definition applies generally

The definition of disability is provided legislation

applies generally

Definition for RA is narrower than that used for purposes of non-discrimination law
Concerns

Medical model oriented definitions of disability

Narrower definition of disability for the purpose of RA
Disproportionate Burden

- Costs of the accommodation
- Subsidies available to cover those costs
- Other Factors
  - activities of the undertaking,
  - the benefit that the disabled person receives,
  - the benefit that others receive
Duty to Consult the Disabled Worker

No explicit legislative provisions

Scant case law

BEST PRACTICES
Classification and Remedies

Discrimination

COMPENSATION
Remedies

- Financial compensation
- Compensation, and/or order the employer to adopt or implement a certain accommodation
- Administrative sanctions
Some conclusions
Reasonable Accommodation as a Gateway to the Right to Work
Inconsistency with EU and/or UN Standards

Ambiguities

Best Practices

Importance of Awareness Raising
Thank you for your attention

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