

## **Definition of disability**

The UN Convention on the Rights of Persons with Disabilities (“CRPD”) was adopted by the UN in 2006. Hungary was the first European country to ratify it. The CRPD details and elaborates long-standing human rights guarantees in the particular context of disability

The CRPD does not define ‘persons with disabilities’, but according to Article 1 (which sets out the purpose of the treaty and not its definitions): ‘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’.

Article 5 of the Employment Framework Directive operates in favour of “persons with disabilities”. The Directive does not define this phrase but the Court of Justice of the EU has had several cases about it. Since the EU’s ratification of the CRPD, the Court has changed its approach in order to bring it into line with the Court’s understanding of Article 1 of the CRPD. It has said that “disability” must be understood as “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”.(CJEU, Case C-312/11, Commission v Italy 4 July 2013)

## **Reasonable accommodation**

Article 2 of the CRPD defines reasonable accommodation as: ‘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’.

(Az „ésszerű alkalmazkodás” az elengedhetetlen és megfelelő módosításokat és változtatásokat jelenti, amelyek nem jelentenek aránytalan és indokolatlan terhet, és adott esetben szükségesek, hogy biztosítsák a fogyatékossgal élő személy alapvető emberi jogainak és szabadságainak a mindenkit megillető, egyenlő mértékű élvezetét és gyakorlását)

## **Individual cases**

Reasonable accommodation requires a focus on the ‘particular case’ and entails (in the employment context)

- (1) the effectiveness of the modifications or adjustments in removing the disadvantage for the particular disabled person; and
- (2) the practicality of carrying them out by the particular employer.

## **Discrimination**

The denial of reasonable accommodation is a form of discrimination, which is prohibited by Article 5 of the CRPD. Article 5(3) requires State Parties to ‘take all appropriate steps to ensure that reasonable accommodation is provided’ in practice.

## **Scope**

Reasonable accommodation duties must be introduced to cover all the rights included in the CRPD.

In the employment context, Article 27 gives guidance as to the breadth of its material scope. It covers “general technical and vocational guidance programmes, placement services and vocational and continuing training” (Article 27(1)(d)), “labour and trade union rights” and “self-employment, entrepreneurship, [...] cooperatives and [...] one’s own business”.

Its scope extends to all people with disabilities.

## **When is the duty triggered?**

When must employers (or other duty bearers) have a duty to make (or consider making) reasonable accommodations? Article 5 of the Employment Equality Directive and the CRPD are both silent on this. In the EU, only the UK specifies this in legislation. Analysis has shown that three main approaches are adopted.

1. the duty will be triggered only where an employer knows or ought to know that the person in question is disabled

2. the duty is triggered only where a specific request has been made to the employer by the disabled person – and will not arise simply because the employer is aware that an employee or applicant is disabled
3. the duty will be triggered only when the employer has been informed of the need to make an accommodation by a competent public authority.

Despite the silence of the Directive and the CRPD on this issue, the latter two approaches do not capture the spirit of the reasonable accommodation duties in either text.

### **Types of accommodation**

National laws adopt an individual-oriented and solution-oriented approach. The accommodations required may be divided into two main classes:

1. technical solutions – these include assistive devices or other adaptations of the workplace
2. organisational arrangements – these include organisational arrangements, such as adjustment of working hours and re-distribution of duties, teleworking arrangements, disability leave, extended or additional leave, the provision of assistance, re-location to a different office and redeployment to a different job.

### **What is “disproportionate burden”?**

Laws emphasise the costs of the accommodation and the subsidies available to cover those costs. In some countries national laws prescribe a wide-ranging evaluation to assess whether the accommodation entails a disproportionate burden – entailing consideration also of factors other than cost (e.g. the activities of the undertaking, the difference the accommodation makes to the disabled person, and the benefit the accommodation makes to others).

### **Beyond employment**

The EU Employment Equality Directive does not meet the obligations set out in the CRPD prohibiting discrimination beyond the fields of employment and occupation. Under the CRPD, it falls on States Parties to ensure that a wide array of social actors, including

employers, schools, healthcare providers and suppliers of services, accommodate persons with disabilities.

### **For example, education**

Article 24 of the CRPD addresses education and requires States Parties to recognise the right of persons with disabilities to inclusive education without discrimination and on the basis of equal opportunity. In order to realise this right, States Parties must ensure, inter alia, that persons with disabilities are not excluded from the general education system on the basis of disability; that they can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live; and that reasonable accommodation of the individual's requirements is provided.

### **Hungary**

The Constitution prohibits disability-based discrimination.

Reasonable accommodation for disabled people in employment contexts is required by

- Article 15 of Act XXVI of 1998 on the Rights of Persons with Disabilities and the Guaranteeing of their Equal Opportunities, Paragraphs (1) and (2): 1 January 1999; Paragraphs (3) and (4): 1 January 2008;
- Article 51 Paragraph (5) of Act I of 2012 on the Labour Code: 1 July 2012;
- Article 2 Paragraph (3) of Act XXXIII of 1992 on the Status of Public Employees: 1 July 2012;
- Article 222 Paragraph (1) of Act CLXII of 2011 on the Status and Remuneration of Judges: 1 January 2013;
- Article Act LXVIII of 1997 on the Service Relationship of Employees of the Justice System: 1 January 2013;
- Act CLXIV of 2011 on the Status of the Chief Prosecutor, Prosecutors and Other Prosecutorial Employees: 1 January 2013;
- Act CXCIX of 2011 on Civil Servants: 1 March 2012.