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New CJEU cases on reasonable accommodation



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REASONABLE ACCOMMODATION



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REASONABLE ACCOMMODATIONS



TOPICS

1. Disability discrimination
2. Reasonable accommodation
- 3.-5. **New decisions**
6. Conclusions

DECISIONS

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1. DISABILITY DISCRIMINATION IN EU LAW



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PRIMARY LAW

Art. 19 TFEU:

- *combat discrimination based on sex, racial or ethnic origin, religion or belief, **disability**, age or sexual orientation*



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EU Charter

Art. 21:

non-discrimination

Art. 26:

*right of persons with disabilities to **occupational integration and participation***



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UN CRPD

- EU ratification in 2010
- Mixed parties
- Part of EU law



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CRPD and EU law

- Inferior to Primary law



- Superior to secondary law

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Primacy

Primacy of international agreement:
interpreted in a manner that is
consistent with the agreement

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Directive 2000/78

- Discrimination **ground**
- Wide **scope**
- **Definitions + exemptions**
- Burden of **proof**

General provisions + Art. 5

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Recent cases

- Tartu Vangla (C-795/19)
- Komisia za zashtita to diskriminatsia (C-824/19)
- HR Rail (C-485/20)



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EU FRAMEWORK

Primary law

UNCRPD

Directive

Case law



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2. REASONABLE ACCOMMODATION IN EU LAW

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CRPD and RA

- Part of **non-discrimination**
- From requiring **access**
- **Reasonable**: appropriate, effective
- **Undue** burden: proportionality

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Directive 2000/78 Article 5

„employers shall take appropriate measures...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”

„not be disproportionate when it is **sufficiently remedied** by measures existing”

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QUESTIONS IN EU LAW

1. Concept of **disability**
2. Notion of **worker**
3. **Reasonable accommodation**



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First: What is DISABILITY?



C-13/05 Chacón Navas

„**limitation** which results in particular from physical, mental or psychological impairments and which **hinders the participation ...** in professional life.”

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Disability

„Limitation ...
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, C-337/11

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Who is a WORKER?

- CJEU notion of worker
- **Wider** than employee
- **Extending** the scope



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Reasonable accommodation

Elimination of barriers:

- material,
- also organisational
- e.g. **working hours**

HK Danmark C-335/11, C-337/11



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Disproportionate burden



Costs

Resources of the organization

Public **funding**, assistance

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3.

TARTU VANGLA

C-795/19

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THE STORY

Prison officer 14 years
Impediment from childhood
Bar by law
Corrective aids not permitted
Dismissed



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ABSOLUTE BAN - TESTS

Disability?
Unequal treatment?



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PROPORTIONALITY TEST

Genuine and determining occupational requirement?

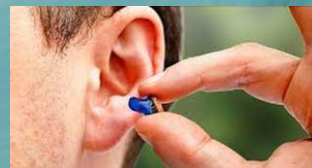
- Legitimate?
- Proportionate:
 - Appropriate?
 - **Necessary?**



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Reasonable accommodation

- **Appropriate** measures:
 - hearing aid, or
 - other post
- Disproportionate burden?



Ban: **not necessary**

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Essence of the judgment

Precluded:

- absolute **bar**
- without checking **capability**
- after **reasonable accommodation**



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Individual assessment of
capabilities
with **reasonable accommodation**

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4. KOMISIA ZA ZASHTITA OT DISKRIMINATSIA C-824/19

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THE STORY



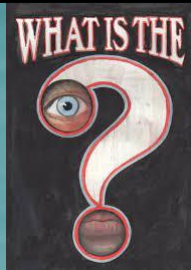
2014 Sofia juror

No proceedings or replacement

Legal objective - immediacy

2016 new law: many proceedings

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*Does the Directive exclude a **blind person** from any opportunity to perform duties as a **juror** in criminal proceedings?*

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BAN - TESTS

Disability?
Employment?
Unequal treatment?

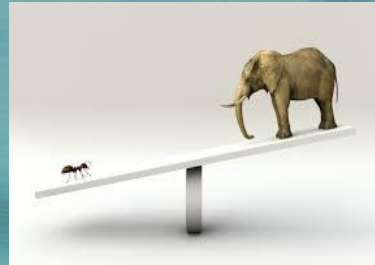


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PROPORTIONALITY TEST

Genuine and determining occupational requirement?

- Legitimate?
- Proportionate:
 - Appropriate?
 - **Necessary?**



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Reasonable accommodation

- **excluded** from criminal proceedings
 - **investigation** of reasonable accommodation
 - **Capable** of performing duties
- Not necessary measure**

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Lesson 2

Precluded:

- a blind person **totally deprived** of
- performing the duties of a **juror** in criminal proceedings

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5. HR RAIL C-485/20

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THE STORY



Railway maintenance technician

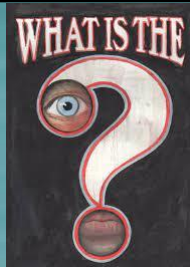
Pacemaker after a year

Unfit to perform the duties

Warehouseman's position

Dismissal

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Does the Directive require,
if **no capable** of the assigned post,
to assign to **another post**
without **disproportionate** burden?

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ABSOLUTE BAN - TESTS

Worker?
Disability?
Unequal treatment?
No exemption!



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Reasonable accommodation



- Discrimination
 - **Appropriate** measures - broad:
 - **reassignment** to another post
 - Disproportionate burden? Vacancy?
- Obligation!

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Lesson 3

- Requirement to **reassign** to another post
- If not a **disproportionate burden** for the employer

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TERMINATION RESTRICTED?

- Extra **protection** in dismissal
- Obligation of **reassignment**
- **Capability** examined
- Burden: **proportionality**

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CONCLUSIONS

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REASONABLE ACCOMMODATION

- **Discrimination** form
- **Flexible** notion
- **Colourful** measures
- EU law and **CRPD**

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Lessons from the 3 decisions

- Ban on jobs
 - **Proportionality** test
- Incapability
 - Reassignment **obligation**

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Thanks for your attention



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