Reasonable Accommodation in the EU
Present and Future

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1. Meaning

1.1 Purpose

"Instead of requiring disabled people to conform to existing norms, the aim is to develop a concept of equality which requires adaptation and change" (Fredman 2005 p 203).

1.2 Ability to Perform the Essential Functions

“This Directive does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training, without prejudice to the obligation to provide reasonable accommodation for people with disabilities” (Directive 2000/78/EC, recital (17)).

1.3 Distinctiveness

Direct discrimination distinguished.

Indirect discrimination distinguished.

Positive action distinguished.

Accessibility distinguished

Welfare benefits distinguished.

1.4 A Form of Discrimination?

Directive 2000/78/EC.

UN Convention on the Rights of Persons with Disabilities.

2. History and Coverage

2.1 US Origins


Rehabilitation Act 1973, interpretive regulations.

Americans with Disabilities Act 1990.

2.2 European Union


Current Directive – Employment Equality 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.”


2.3 Council of Europe

European Convention on Human Rights 1950
  Glor v Switzerland

European Social Charter 1961, revised 1996
  Autisme-Europe v France
  MDAC v Bulgaria

2.4 United Nations

Convention on the Rights of Persons with Disabilities. 2006
3. In Whose Favour?

3.1 Disabled people and others?

3.2 Defining relevant disabled people

Chacón Navas v Eurest Colectividades

UN Convention on the Rights of Persons with Disabilities

4. Examples

4.1 Employment

UK Disability Discrimination Act 1995, s 18B(2) –
(a) making adjustments to premises;
(b) allocating some of the disabled person’s duties to another person;
(c) transferring him to fill an existing vacancy (Archibald v Fife Council);
(d) altering his hours of working or training;
(e) assigning him to a different place of work or training;
(f) allowing him to be absent during working or training hours for rehabilitation, assessment or treatment;
(g) giving, or arranging for, training or mentoring (whether for the disabled person or any other person);
(h) acquiring or modifying equipment;
(i) modifying instructions or reference manuals;
(j) modifying procedures for testing or assessment;
(k) providing a reader or interpreter;
(l) providing supervision or other support.

UK Employment Code of Practice –
permitting flexible working;
allowing a disabled employee to take a period of disability leave;
participating in supported employment schemes, such as Workstep;
employing a support worker to assist a disabled employee;
modifying disciplinary or grievance procedures;
adjusting redundancy selection criteria;
modifying performance-related pay arrangements.

4.2 Non-Employment

Education - Flemish Government v FEVLADO

Transport – Ross v Ryanair and Stansted Airport

Prison accommodation – Hamilton v Jamaica
5. Assessing What Steps the Duty Requires – The Substantive Component

5.1 Claimant-Centred Considerations

“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” (Directive, Art 5)

- Effectiveness.
- Individualisation.

5.2 Respondent-Centred Considerations

- Disproportionate burden/undue burden/undue hardship
- Cost.
- Impracticability.
- Disruptiveness.

“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” (Directive, Art 5)

6. The Importance of Dialogue – The Procedural Component


PMI v Latif

7. Facilitating Effective Implementation

Flexibility of “reasonableness”.

Dangers –

“if the reasonable person characteristically holds common or ordinary beliefs and attitudes, then precisely because discrimination is constituted by widely shared beliefs about the lesser humanity of certain others, the reasonable person standard will actually tend to build discrimination into the legal standard itself” (Moran 2007 p 149).

- Detailed statutory guidance or codes of practice
- State funding
- Training and awareness-raising
References

(a) Cases

Archibald v Fife Council [2004] IRLR 197

Autisme-Europe v France, Committee on Economic and Social Rights, Collective Complaint No 13/2002’,

Case C-13/05 Chacón Navas v Eurest Colectividades SA, [2006] ECR I-6467.

Flemish Government v FEVLADO, Ghent, March 2009

Glor v Switzerland, Application No 13444/04, 30 April 2009


MDAC v Bulgaria, Committee on Economic and Social Rights, Complaint 41/2007

Project Management Institute v Latif [2007] IRLR 579

Ross v Ryanair and Stansted Airport [2004] EWCA Civ 1751

(b) Legislative Material

Disability Discrimination Act 1995(UK)


United Nations Convention on the Rights of Persons with Disabilities
(c) Books and Journals


