

EU DISABILITY LAW
AND
THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH
DISABILITIES

CASE STUDIES

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CASE STUDY 1 – DISCRIMINATION IN EMPLOYMENT

Article 27

Mrs. Archibald worked as a road sweeper for the respondent public authority. In 2009, she developed a problem with her feet and following a complication during surgery, became virtually unable to walk and thus no longer able to carry out the main functions of her job. She was off work continuously for some 18 months but, in accordance with the Authority's standard policy, only received 'sick pay' for six months of that period.

Mrs. Archibald was able to carry out general clerical work. The Authority placed her on its list of 'redeployees' and interviewed her for a number of administrative roles, including some that would have amounted to a promotion in terms of pay and benefits, but in each case a better qualified candidate was appointed.

Earlier this year, taking the view that there was no realistic prospect of a return to work, the Authority dismissed Mrs. Archibald. She brings a claim in the labour court.

1. Would the Authority have been justified in terminating Mrs. Archibald's employment any earlier, given that she was incapable of performing the main functions of her job?
2. Was the Authority obliged to provide reasonable accommodation in circumstances where nothing could be done to enable Mrs. Archibald to perform the main functions of her job?
3. Was it appropriate to require Mrs. Archibald to go through a competitive interview process for the alternative administrative roles or should she have simply been put into one of those jobs, even though there were better qualified candidates?
4. Would it have been appropriate to give her a role even if that would have amounted to a promotion?
5. Was the Authority obliged to train Mrs. Archibald so that she became better qualified to carry out an administrative role?
6. Should the Authority have paid Mrs. Archibald throughout the period of her sickness absence?

CASE STUDY 2 – DISCRIMINATION IN THE PROVISION OF GOODS / SERVICES

Articles 5 & 9

The claimant, Mr. Ross, suffers from cerebral palsy and arthritis, is unable to walk for long distances and has difficulties in standing. He is not a permanent wheelchair user but does require use of a wheelchair to travel any significant distance. However he does not own a wheelchair.

Mr. Ross owns a property abroad and is a regular visitor to it. To get there he uses a state-owned and run airport near to his home and usually travels with the same commercial airline, obviously to the same destination.

At the airport, after check-in there is a very long walk, through the duty-free shops, via various bars and restaurants, to the departure gate. Mr. Ross says that he cannot travel this distance without the use of a wheelchair. The airport authority will allow wheelchair users to take their own wheelchairs from the point of check-in to the door of the plane they are travelling on. It also makes available a small number of wheelchairs for others to use, but charges a fee of €20 for doing so. It also points out that there are numerous benches along the route to the departure gates so that Mr. Ross is able to make frequent stops and does not have to make the journey in a single go.

When Mr. Ross has travelled in the past he has regularly found that there is no wheelchair available for him to use. Even when one is available, he resents having to pay the fee to use it pointing out that non-disabled passengers are not charged to negotiate their way around the airport.

The airline provides no help or assistance at all, taking the view that how Mr. Ross negotiates his way around the airport is a matter solely for the airport authority. It allows up to four passengers per flight to be accompanied by a wheelchair.

Mr. Ross sues the airport authority and the airline.

1. Should those who need a wheelchair to negotiate around the airport provide their own?
2. If a wheelchair ought to be provided, who should be responsible for doing so the airport authority, the airline or both?
3. And how do you determine the number that ought to be provided?
4. Alternatively, is it enough that there are numerous benches along the route so that it is not strictly necessary for Mr. Ross to have use of wheelchair?
5. Is it appropriate to charge for use of a wheelchair where one is provided? Is Mr. Ross's ability to pay relevant?

CASE STUDY 3 – DISCRIMINATION IN RELATION TO HOUSING

Article 19 & 28

Mrs. Barwick is an elderly and long term disabled resident of a local authority owned and run residential care home. She is 99 years old and has been living at the care home for some 7 years, having used the day care facilities there for some years before that. The care home is well and caringly run by the Authority and it is regarded by Mrs. Barwick as her real home and the staff and other residents as not only her friends but her family. Closure of the home would represent an immense disruption for her.

The full capacity of the care home is 30 residents. For various reasons, the number of residents at the care home has fallen to only 9.

The Authority is committed to a programme of modernising services to people with high care needs, including disabled people. So far as accommodation provision is concerned, its strategy includes the aim of moving away from the traditional model of the residential care home to a new model where those with care needs are provided with self-contained accommodation with appropriate and flexible care and support services.

In accordance with its strategy the Authority has taken the decision to close the home and move Mrs. Barwick to self-contained accommodation which is in a different geographical location. Mrs. Barwick challenges the decision.

1. Is the fact that Mrs. Barwick is a disabled person relevant? What could it add to her challenge?
2. In particular how, if at all, can the UNCRPD or EU disability law be relied upon by Mrs. Barwick to undermine the Authority's decision?
3. What would the Authority have to do to demonstrate compliance with any obligations under the UNCRPD / EU disability law?

CASE STUDY 4 – DISCRIMINATION IN ACCESS TO JUSTICE

Articles 1, 12 & 13

On the first day of a trial / hearing Mr Smith, the Claimant, who is not legally represented and intends to present his own case, declares that he has a mental impairment that will make it very difficult for him to participate effectively in the trial process without reasonable accommodation being made for him. He provides a list of the things he would like done which includes the following:

- That the trial be moved from a courtroom to a less formal environment as he feels intimidated and overwhelmed by the formality of the courtroom and legal proceedings.
- Provision of a 'support worker' / intermediary who can explain matters to him as the trial progresses and to assist him formulating questions and answers.
- Breaks, as he will find the proceedings very tiring.
- Judicial patience, as things may need to be explained to him on more than one occasion before he properly understands them and he will have trouble making oral submissions at the end.

1. Is the claimant disabled? If you do not know the answer, how would you determine that issue? Is an adjournment necessary?
2. If the claimant is disabled, how would you determine what, if any, of the above suggested accommodations should be provided and how? What is the test – is it based on the claimant's capacity? Reasonableness? Practicability? Balancing the interests of justice? A combination of some or all of those? Something else?
3. If the case is adjourned, the defendant / respondent may make a costs application against the claimant. How do you deal with that?
4. Would your answer to any of the above questions be different if the claimant had attended court on at least one previous occasion, to deal with interim matters, but had never before suggested that he was (a) disabled or (b) would need any reasonable accommodation?
5. Would your answer to any of the above questions be different if it was not a party, but a representative / advocate who had the mental impairment? Or a witness