

Preliminary Ruling Procedures and the Integration of Persons with Disabilities

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Article 267 TFEU: General aspects

- The jurisdiction of the Court of Justice of the European Union
- Scope
 - The problem posed by mixed agreements
- Article 267 TFEU and national courts

Article 267 TFEU: Primacy and direct effect

- General aspects
- Primacy
- Direct effect
- Types of direct effect:
 - Vertical
 - Horizontal
- The Court's judgment of 19 January 2010, Küçükdeveci, C-555/07, ECR p. I-365

The integration of persons with disabilities and the primary law

■ Article 19 TFEU

“1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

2. By way of derogation from paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1.”

■ The Charter

- Cf. Article 21

“Any discrimination based on [...] disability is prohibited.”

- Cf. Article 26

“The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.”

The UN Convention on the Rights of Persons with Disabilities

- Mixed Agreement
- Jurisdiction of the Court
 - Direct effect?
 - Consistent interpretation?

Secondary law

■ Directive 2000/78

– Cf. Article 1

“The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.”

– Cf. 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.”

■ CJEU case-law on Directive 2000/78

- Cf. the Court's judgment of 11 July 2006, Chacón Navas, C-13/05, ECR p. I-6467.
- Cf. the case pending of Jette Ring (C-335/11)