



## Reasonable Accommodation in the EU law

### *The Fight against Discrimination*

Prof. Dr. Jenny E.  
Goldschmidt (Netherlands´  
Institute of Human Rights,  
Utrecht University)

ERA Trier 20 June 2011



## Outline

- Introduction
- Relevant international law
- Concept of disability
- Disability rights
- Reasonable accommodation: a new element?
- positive obligations
- Difference with positive discrimination
- Scope
- Concluding remarks and questions.



## International law: some important provisions

- article 26 ICCPR
- CESCR GC No 20 → see next slide
- ECHR art 14 (accessory nature)
- 12<sup>th</sup> Protocol ECHR
- UN Convention on the Rights of persons with Disabilities (incl. optional Protocol)



## GC CESCR

- The denial of reasonable accommodation should be included in national legislation as a prohibited form of discrimination on the basis of disability.<sup>[1]</sup> States parties should address discrimination, such as prohibitions on the right to education, and denial of reasonable accommodation in public places such as public health facilities and the workplace,<sup>[2]</sup> as well as in private places, e.g. as long as spaces are designed and built in ways that make them inaccessible to wheelchairs, such users will be effectively denied their right to work.
- <sup>[1]</sup> See CRPD, art. 2: “‘Reasonable accommodation’ means 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.”
- <sup>[2]</sup> See CESCR general comment No. 5, para. 22.



## Concept of disability

- **No definition in texts**
- **Diverse**
- **Including: 'assumed' disabilities**

### Scope:

- **EUCoJ 11 July 2006, Sonia Chacón Navas:**
  - **Sickness as such is not covered by ground disability**
  - **17 July 2008: Coleman: protection of employees associated with persons with disabilities.**



## Disability Rights

- **In essence two elements:**
  - a. impairment of person**
  - b. Environmental barriers**

### See:

#### **Preamble of Draft Convention sub (c)**

- **Development from 'hand in cap' to participation.**



## Framework directive 2000/78/EC:

Article 2.2.(b) (ii):  
(in relation to indirect discrimination)

- as regards persons with a particular disability, the employer or any person or organization to whom this directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.

Article 5:

- In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided.



## Positive obligations

- Respect, fulfill and protect as Human Rights obligations
  - Fits into non-discrimination framework to take difference into account.
- Different forms of positive obligations defined by international and national courts and commissions.



## Progressive implementation

- Autism France v. France, ECSR 4-11-2003, Complaint No. 13/2002.



## Reasonable accommodation- general aspects

- not only relevant in cases of disability
- e.g. obligation to have women's facilities in the workplace
- but: absolute necessity in disability cases.
- barriers are caused by the environment
- Refusal is sui generis form of discrimination, but no exception to equality.



## Reasonable accommodation-specific aspects

- no absolute duty
- but: proportionality test
- depends on concrete circumstances.



## Reasonable accommodation ≠ preferential treatment

- Not temporary
- Aim is to guarantee equality, not to repair inequalities or to accelerate equality.



## Broad scope

- Relation to torture: see Report of UN SR on Torture 2008
- Access to Justice: ECtHR *Farcas v. Romania* 32596/04 (non admissible)
- Prison Conditions: ECtHR 24-1—2006, *Vincent v. France*



## Concluding remarks

- Due Diligence
- Progressive approach



## Relevant websites

- SIM data base  
: <http://sim.law.uu.nl/SIM/Dochome.nsf?Open>
- Equal Treatment Commission of the Netherlands:  
[www.cgb.nl](http://www.cgb.nl)
- EU and disability:  
[http://ec.europa.eu/employment\\_social/disability/index\\_en.html](http://ec.europa.eu/employment_social/disability/index_en.html)
- UN and disability:  
<http://www.un.org/esa/socdev/enable/>
- UNHCR and disability:  
<http://www.ohchr.org/english/issues/disability/index.htm>
- Case law:
  - <http://cmiskp.echr.coe.int/>
  - <http://curia.europa.eu/>