

**EU Network of Legal Experts  
on Non-Discrimination  
Annual Conference 2010**

**EU Disability Non-Discrimination Law  
in Practice**

Anna Lawson

Centre for European Law and Legal Studies  
and Centre for Disability Studies  
University of Leeds

---

---

---

---

---

---

---

**Discussion Topics**

- 1. To whom should protection from disability discrimination be granted?
- 2. What is 'reasonable accommodation' and how does it relate to 'positive action'?
- 3. What is 'accessibility' and how does it relate to 'reasonable accommodation'?

---

---

---

---

---

---

---

**Who should be protected ?**

---

---

---

---

---

---

---

Who should be protected ?

Definition

- Directive 2000/78/EC
- *Chacón Navas v Eurest Colectividades SA*
- CRPD, Article 1
- Proposed Directive

---

---

---

---

---

---

---

Who should be protected ?

Protection of non-disabled people

- *Coleman v Attridge Law and Steve Law*
- Association - direct discrimination and harassment only?
- Perceived discrimination?
- Symmetrical protection?

---

---

---

---

---

---

---

What is Reasonable Accommodation and  
How does it Relate to Positive Action?

---

---

---

---

---

---

---

**What is Reasonable Accommodation and  
How does it Relate to Positive Action?**

**The Obligation under EU Law**

- Directive 2000/78/EC, Article 5
- Appropriate measures – Recital 20
- Disproportionate burden – Recital 21

---

---

---

---

---

---

---

**What is Reasonable Accommodation and  
How does it Relate to Positive Action?**

**The Obligation under UN Law**

**Convention on the Rights of Persons with Disabilities**

- Article 27
- Article 5(2)
- Article 2

---

---

---

---

---

---

---

**What is Reasonable Accommodation and  
How does it Relate to Positive Action?**

**Positive Action**

- Directive 2000/78/EC, Article 7(2)
- CRPD, Article 5(4)

---

---

---

---

---

---

---

What is Accessibility and  
How does it Relate to Positive Action?

---

---

---

---

---

---

---

What is Accessibility and  
How does it Relate to Positive Action?

Convention on the Rights of Persons with Disabilities,  
Article 9

• Aim

• Areas of Life

• Nature of Measures

---

---

---

---

---

---

---

What is Accessibility and  
How does it Relate to Positive Action?

EU Law

• Outside Non-Discrimination

• Within Non-Discrimination

---

---

---

---

---

---

---

**EU Network of Legal Experts  
on Non-Discrimination  
Annual Conference 2010**

**EU Disability Non-Discrimination Law  
in Practice**

Anna Lawson

Centre for European Law and Legal Studies  
and Centre for Disability Studies  
University of Leeds

---

---

---

---

---

---

---



## IS THE EUROPEAN DREAM OVER?

By Rodolfo Cattani

In his best seller *The European Dream* (2004) Jeremy Rifkin outlined the most significant features of the nascent Europe's vision of the future which he considered a possible alternative model to the historic American Dream. For more than two centuries, he argued, Europe has looked to the American dream as to the driving force for humanity's progress, but now the newly emerging European vision might represent a new chapter in world's history, as it is the first attempt to create a global consciousness befitting a globalizing economy. Although Rifkin was mainly interested in the implications of the European development for the business community, he elaborates on the social, political and cultural aspects of both "Weltanschauungen". While the American dream emphasizes the economic growth and the individual opportunities, the European dream focuses more on sustainable development and the quality of life. Americans concentrate on the work ethic, Europeans place more of a premium on balancing work and leisure. America always considered itself as a great melting pot, Europe promotes its rich multicultural diversity. Americans support a strong military presence worldwide, Europeans on the contrary emphasize economic cooperation and consensus over traditional geo-political approaches to international policy.

In his book Mr. Rifkin does not underestimate the difficulties and the weaknesses of the European society, but he believes that Europe is creating a bold new vision for the future of humanity.

Is this really the case?

Thomas Hammarberg, Commissioner for Human Rights at the Council of Europe, is of the opinion that the best defence of human rights is that we all know what rights we have and how we can complain against injustice (Lisbon Forum 2009 on "Creating a culture of human rights through education"). Education about human rights is an important tool to combat discrimination and it is a prerequisite for social inclusion of vulnerable groups. Despite the progress achieved, he points out, much remains to be done to inform and educate against discrimination.

In his keynote speech at the 3rd Equality Summit in Stockholm, 16 November 2009, Mr. Hammarberg said that the struggle for human rights is largely about preventing discrimination and there is an urgent need to protect vulnerable groups from injustice. In a difficult economic situation, when tough decisions on priorities are made, equality becomes a key issue, but the economic crisis should not turn into a social one as well. Mr. Hammarberg recognized that during the current decade Europe has made important strides towards equality, but that direct and indirect discrimination is still taking place on a multitude of grounds, such as gender, race, ethnic origin, religion, belief, disability, sexual orientation and gender identity. Certain groups, such as Roma people, who at present face the highest level of discrimination in Europe, are particularly vulnerable and it is widely recognized that persons with disabilities have been excluded from society for a long time, as policies concerning them have focused on institutional care, medical rehabilitation and welfare benefits rather than on their ability and their right to be active citizens with full civil, cultural, economic political and social rights. The paradigm shift from the medical to the social pattern of disability is the prerequisite for social inclusion. Disability action plans have been adopted both at European and national level as millions of persons with disabilities and their families cannot be deprived of their right to participate in economic and social life.

The UN Convention on the Rights of Persons with Disabilities, which has already been signed by most of the EU Member States and also ratified by many of them, will bring about a dramatic advancement of the disability strategy. Nonetheless, there are some alarming political developments which show that discrimination is far from being eradicated also in the most solid democratic societies.

In 2008 the European Commission proposed a new horizontal directive which should ensure that there is protection against discrimination on the grounds covered by article 19 of the EU Constitution. The aim of the proposed directive is to ensure equal protection against discrimination in the fields not covered by the so-called employment directive (2000(78)EC) and to extend to the groups at risk of discrimination on the grounds of religion, belief, disability, age and sexual orientation the same protection granted against discrimination on the grounds of race, ethnic origin and gender. The directive has received the support of the European Parliament, but then it disappeared into the legal machinery of the EU Council and has not been considered a priority for the past two years. The reason for this is that there is a strong opposition on the part of a number of member states, led by Germany, which fear the extra costs of implementing accessibility measures and respecting legal obligations.

The adoption of this directive is extremely urgent, because in some EU countries alarming discriminatory behaviours and actions are emerging. There is a growing wave of fear and refusal against ethnic minorities, migrants and religious creeds with particular regard to Roma people and Moslems. Is this compatible with the ideals and the mission of the new European community that has raised from the ruins of the war thanks to the visionary spirit of leaders such as Robert Schumann and Altiero Spinelli? Somehow, Europe seems to retrace its own steps. Racial contempt and discrimination towards human beings considered as rubbish to be disposed of remind us of the times when entire populations were deported and liquidated, first of all Roma people. Democratic societies should react against such a worrying trend. Despite the economic and social crisis the dark side of human nature should not be allowed to arise again. A society that does not hesitate to discriminate against persons on the ground of human diversity might easily put at risk also the rights of persons with disabilities when they are perceived as a burden rather than a social added value. Children and women with disabilities are the first victims of such a phenomenon, because they are the most vulnerable and the less protected. We should not underestimate the negative impact of the social and cultural involution which makes human and fundamental rights subject to economic sustainability and deregulation. If we want to live up to the European dream, we must take up this challenge and implement the appropriate means, i.e. education, information, awareness raising and persuasion. If we fail, the European dream could turn into a nightmare.