



Reasonable Accommodation for Persons with Disabilities outside the Field of Employment

Professor Lisa Waddington

Dr. Andrea Broderick



International and European Legal Context

- UN Convention on the Rights of Persons with Disabilities (CRPD).
- CRPD requires State Parties to prohibit discrimination with regard to 'all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field'.
- Discrimination is explicitly defined as including a denial of a reasonable accommodation.

International and European Legal Context

- The Commission's 2008 proposal for a horizontal non-discrimination directive extending beyond employment.
- Proposal covers:
 - Access to social protection, including social security, social assistance, social housing and healthcare.
 - Access to education.
 - Access to and supply of goods and services, including housing.

National Legal Context

- Constitutional and General Principles Addressing Disability Discrimination.
- Non-discrimination legislation prohibiting disability discrimination with regard to social protection, education and access to goods and services.
- Legislation addressing specific areas of disability policy: accessibility and education.

Reasonable Accommodation Duties (1)

- Reasonable accommodation duties covering all three fields addressed by the EU proposal exist in Austria, Belgium, Bulgaria, Croatia, Cyprus, Finland, Germany, Ireland, NLs, Slovakia, Slovenia, Spain and UK.
- In some Member States duties are only partial compared to the Commission's proposal.
- Reasonable accommodation duties with regard to services and education exist in the Czech Republic.
- Reasonable accommodation duties with regard to education exist in Luxembourg and Portugal.

Reasonable Accommodation Duties (2)

- *De facto* reasonable accommodation in some fields exist in Denmark, France, Greece, Hungary, Latvia, Luxembourg, Malta, Portugal and Romania.
- No duties beyond employment exist in Estonia, Italy, Lithuania and Poland.
- In Croatia, Cyprus and Spain legislation adopts a very broad approach referring to accommodation duties in the context of participation in 'public and social life'(Croatia) 'human rights and fundamental freedoms'(Cyprus) and 'all human rights' (Spain).

Reasonable Accommodation Duties (3)

- Common to refer to 'reasonable accommodation', but other terms are also used':
- 'due and appropriate adjustments' (Finland), 'effective accommodation' (the Netherlands), 'appropriate accommodation' (Slovenia), 'necessary and suitable amendments and adjustments' (Cyprus), 'necessary and appropriate modification and adaptations' (Spain).
- This terminology emphasises the goal which the accommodation or adjustment must achieve.

Justifications for a Failure to Make an Accommodation (1)

- Legislation most frequently refers to a defence or justification based on the notion of a 'disproportionate burden' e.g. Austria, Belgium, Croatia, France, NLs, Spain.
- However defences and justifications are also defined in other ways: Cost – Ireland and one law in Bulgaria; Combination of disproportionate burden and cost – Cyprus; Unreasonableness – Finland, UK; Substantial burden – Sweden (School Act).

Justifications for a Failure to Make an Accommodation (2)

- Factors to be taken into account in determining if a justification exists:
- Cost is rarely the only factor to be taken into account.
- Other factors are, for example, the level of public assistance available, organisational factors, the impact of (a failure to make) the accommodation on the population of disabled persons in general, and the needs of the person with a disability in question.

Concluding Remarks (1)

- Some areas covered by the Commission's 2008 proposal are more likely to be subject to reasonable accommodation duties than others within the Member States.
- Social Protection: Reasonable accommodation duties seem to be more widespread with regard to healthcare than with regard to the other areas of social protection.
- Education: most comprehensive and clear framework exists.

Concluding Remarks (2)

- Goods and Services: Reasonable accommodation duties most likely to exist with regard to access to services, and, to a slightly lesser extent, housing. Few examples of duties imposed on manufacturers of goods.
- The CRPD seems to have had relatively little impact on legislative reform in the Member States, although there were some notable exceptions.
- There is some evidence that the CRPD is pushing forward policy reform in some Member States.

Questions for Reflection (1)

- Is there any interesting case law on reasonable accommodation outside the field of employment in your Member State?
- What are the limits to the duty to make a reasonable accommodation outside the field of employment in your Member State? What factors are to be taken into account in determining the limitations?
- Is there any good practice from your Member State with regard to reasonable accommodation duties outside the field of employment?

Questions for Reflection (2)

- If national law in your country does not clearly or explicitly provide for a duty to accommodate outside employment, can the CRPD be used by the courts to “fill the gap” in some way?
- What policy or legislative steps have been taken to extend reasonable accommodation duties beyond employment in your Member State as a result of the entry into force of the CRPD?