



Legal Seminar 29-11-2013

## Workshop 3 Disability discrimination – including accessibility

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### This presentation

- 1) **Recent case-law**
  - Ring & Werge
  - Com v. Italy
  - The new case C-354/13 Kaltoft
- 2) **Accessibility**
  - the UN Convention
  - the work of the European Union

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### 1) UN Convention of Rights of Persons w/Disabilities (UNCRPD)

- **Persons with disabilities**
- include
- *those who have long-term physical, mental, intellectual or sensory impairments*
- *which*
- *in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others*

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#### Cases **Ring & Werge** Jud. April 2013

- *Employees suffering from chronic illnesses*
  - **constant lumbar pain**
  - **whiplash injury (road accident)**
- *Dismissals due to frequent absences from work*
- *DK law allows employers to dismiss employees who have received salary during periods of illness of more than 120 days (over 12 months) with a shortened notice period (1 month)*

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#### Questions referred to the Court

##### 1. *Concept of disability*

- **Limited ability to carry out work = disability?**
- **Incurable / temporary diseases = disability?**

##### **Court :**

- **Dir. 2000/78 must, as far as possible, be interpreted in a manner consistent with the UN Convention**
- **Disability includes a condition caused by an illness causes a long-term limitation hindering the participation in professional life on equal basis with other workers**

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#### Case **Com v Italy** – Jud. July 2013

- *Reasonable Accommodation - Extent and scope*
- *It applies to all employers and all persons with disabilities – unless disproportionate burden*
- *Not sufficient for Member States to provide support and incentives:*
- *Measures enabling PWD to have access to, participate in, or advance in employment, and to undergo training.*

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### Case C-354/13 Kaltoft (pending)

- *Discrimination on grounds of obesity in the labour market – is it covered by the protection provided for in Directive 2000/78/EC ?*
- *If so, which are the criteria to determine whether a person's obesity means specifically that that person is protected by the prohibition on discrimination in that directive?*

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### 2) Accessibility and the UNCRPD

- 30 March 2007: the European Community **signs** the UN Convention
- **Mixed competences between EU and MS** (all the MS and the EU signed the UN Convention)
- 26 November 2009: Council Decision on the conclusion (**ratification**) of the Convention by the European Community
- 22 January 2011: **entry into force** for the EU

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### EU competence on the UNCRPD

- Most UNCRPD fields concern matters of shared competence
- Declaration of competence (Annex II Decision 2010/48, and appendix, listing legal acts where the EU has competence)
- Declaration can be updated as competences evolve

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### Declaration of competence

- 18 legal acts dealing with accessibility
- 10 legal acts dealing with independent living, social inclusion work and employment
- 9 dealing with personal mobility
- 5 dealing with access to information
- 5 dealing with statistics and data collection
- 3 dealing with development cooperation

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### EU Declaration of Competences – on accessibility

**DG ENTR**  
•radio & terminal equipment, lifts, machinery (platforms), buses, medical products

**DG MOVE**  
•high-speed rail system, inland waterway vessels and passenger ships, motor vehicles and their trailers, and of systems; technical specification of interoperability relating to 'persons with reduced mobility' in the trans-European conventional and high-speed rail system, rights of disabled persons and persons with reduced mobility when travelling by air

**DG INFO**  
•regulatory framework for electronic communications networks and services, universal service and users' rights relating, television broadcasting activities

**DG MARKT**  
•4 Public Procurement directives (water, energy, transport and telecommunications sectors, public works contracts, public supply contracts and public service contracts, postal services and the improvement of quality of services), information society services, harmonisation of certain aspects of copyright and related rights in the information society

**DG REGIO**  
•European Regional Development Fund,

**DG EMPL**  
European Social Fund (DG EMPL) and the Cohesion Fund

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### Recent developments

- Revision of the Public Procurement Directives COM(2011) 896
  - article 40 technical specifications
  - article 61 quality assurance standards (accessibility)
  - article 66 award of contracts (accessibility)
  - article 84 public oversights (report includes accessibility)
- New Structural Funds regulation COM(2011) 615
  - Article 7 on discrimination
  - Article 87 operational progs.: description disability and accessibility
  - article 100 monitoring: disability and accessibility
  - article 101 reporting: disability and accessibility
  - ex ante conditionalities: UN Convention and accessibility
- Proposal for Trans European Networks
  - article 4 objectives (accessibility)
  - article 10 priorities (accessibility)
  - article 39 use of new technologies (accessibility)
  - article 43 accessibility for all users

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## Accessibility

- *Accessibility is considered as a wide concept that includes the*
- *prevention and elimination of obstacles that pose problems for persons with disabilities in using products, services and infrastructures.*
- *But the UNCRPD provides no definition !*

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## UN Convention

## Article 9

- *Accessibility to:*
  - *the physical environment*
  - *Transportation*
  - *to information and communications, including information and communications technologies and systems & Internet*
  - *other facilities and services open or provided to the public, both in urban and in rural areas*
- *A) To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;*
- *C) To provide training for stakeholders on accessibility issues facing persons with disabilities;*
- *H) Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost -> Design for All*

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## UN Convention Article 3 General principles and Article 4 General obligations

- *Accessibility*
- *...for "the full realisation of all Human rights and Fundamental Freedoms for all persons with disabilities," State Parties will*
- *F) To undertake or promote research and development of universally designed goods, services, equipment and facilities (...) which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use,*
- *and to promote universal design in the development of standards and guidelines;*

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## Article 2 – universal design

- *means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.*
- *“Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.*

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## Draft Directive – Horizontal - Art 19 Since 2008 in negotiation

- *Scope*
  - Social protection, including social security and healthcare;
  - Social advantages;
  - Education;
  - Access to and supply of goods and other services which are available to the public, including housing.
- *Principle of equal treatment of persons with disabilities*
- *Art 4*
  - **Effective non-discriminatory access** (anticipatory)  
**Conditions:**
    - Disproportionate burden
    - Fundamental alteration
    - Provisions of alternatives
  - **Reasonable accommodation**  
**Conditions:**
    - Disproportionate burden

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## •Article 16 Regulation 1083/2006 on EU structural funds

- *The Member States and the Commission shall take **appropriate steps to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the various stages of implementation of the Funds** and, in particular, in the access to them.*
- *In particular, **accessibility** for disabled persons shall be one of the criteria to be observed in defining operations co-financed by the Funds and to be taken into account during the various stages of implementation.*



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