

ANNEX

**Case law compendium
on reasonable
accommodation for
persons with disabilities**

Table of Contents

Introduction	4
Belgium.....	4
Refusal of reasonable accommodation and contract termination of a cancer-recovering employee (2018)	4
Failure to investigate possible reasonable accommodation measures for an overweight job applicant (2016)	5
Croatia	5
Recommendations on the provision of reasonable accommodation for a job applicant with an intellectual disability (2020)	5
Discrimination on the grounds of unjustified denial of reasonable accommodation (2016).....	6
Czechia.....	6
Denial of redeployment of an employee with disabilities (2019).....	7
Request for reserved parking by a person with a disability (2018)	7
Prohibition of food consumption in the school cafeteria to celiac students (2017)	7
Finland.....	8
Denial of a request for free school transport for a child with disabilities (2020).....	8
Failure to install a ramp for an electric wheelchair within reasonable time (2019).....	9
Denial of the right to use one's assistant when voting as a denial of reasonable accommodation (2018)	9
Denial of reasonable accommodation for a disabled passenger in need of extra space in an airplane (2017)	10
Lack of access to a mobile display apartment (on a pallet trailer) for a person in a wheelchair (2017).	11
A website incompatible with a screen-reader (2017).....	11
Denial of unemployment benefits for a disabled person for the duration of their studies (2015).....	12
Germany.....	12
Violation of the duty of the public employer to invite for an interview (2020)	12
Denied request for provision of interpreters by a state university for a master's deaf student (2018).	12
Failure to accommodate the specific and special needs of a person with autism in a framework of social welfare integration assistance for persons with disabilities (2016)	13
Inquiring during a job interview about a candidate's disability does not necessarily lead to discrimination (2016)	13
Dismissal which discriminates against an employee with HIV infection (2013).....	14
Great Britain	14
A person with depression claims that the insurance company's refusal to transfer repayment mortgage to interest-only is discriminatory (2019).....	14

Failure to take measures for a nine-year-old student with Asperger's diagnosis (2018).....	15
"Very intense" inquiries about employee's disability led to discrimination (2018)	15
Failure to adopt reasonable accommodation measures and dismissal of an employee with disabilities due to health and safety breach is discriminatory (2018)	15
Failure to provide a reasonable job alternative for a disabled employee (2016)	16
Decision on employer's duty regarding actual or constructive knowledge of an employee's disability (2016)	16
An employee with disabilities claims Company's attendance policy is discriminatory (2015)	16
Wheelchair space use policy of a bus (2015)	17
Employment Judge failed to properly exercise her case management powers to adjourn an oral application for a review (2014)	17
Failure to redeploy a disabled employee (2004)	17
Greece	18
Denied a request to be exempted from afternoon and night shifts due to diabetes treatment (2018)	18
Midwife, mother of a teenage child with Asperger syndrome requesting morning shifts (2018)	18
Denied request for permanent morning shifts to a nurse suffering from thalassemia (2018)	19
Teacher with mobility impairment demands access to the schoolteacher's office (2018)	19
Denied treatment for the thyroid tumour at the hospital led to direct discrimination (2019)	19
Ireland	20
An airline failed to provide reasonable accommodation to a passenger suffering from multiple sclerosis (2020)	20
A school's duty to provide reasonable accommodation to an employee who was refused permission to return to work following an accident (2019)	21
An employee with epilepsy claimed discriminatory dismissal based on his disability which was unknown to the employer (2018)	21
A school certificate including an explanatory note revealing the claimant's dyslexia reported as discriminatory (2017)	22
An employee suffering from depression is dismissed because of his continuous absences (2012)	22
Taxi company refused to carry customer accompanied by her guide dog (2010)	23
Claim against a supermarket based on discriminatory exclusion from its premises (2010)	23
An employee suffering from depression alleged discriminatory dismissal (2008)	23
Provision of reasonable accommodation led to resignation (2005)	24
Lithuania	24
Possible discrimination on the ground of disability when submitting allocations for funding of research projects (2020)	24
An employer rejected a hearing-impaired applicant without assessing the individual's ability to perform the job functions (2020)	24
The Netherlands	25
A visitor with disabilities complains about the lack of accessibility to a casino's toilets (2020)	25

A library denies access to an electric scooter user (2019).....	25
School refused to allow extensive homeschooling for children with disabilities (2019).....	25
A school failed to provide software for pupils with dyslexia (2016).....	26
Claim against a school for the lack of adjustments for a student with diabetes (2016)	26
Discriminatory rejection of a job applicant with non-verbal learning disorder on the basis of the capacity test score (2014)	26
Norway.....	27
An employer refused to provide home office for an employee with a disability (2020)	27
A worker with ADHD's dismissal for work and constructive knowledge (2013)	27
The right to a personal assistant and the limit to provide such an accommodation (2020)	27
An employer failed to take reasonable adjustments for an employee with attention deficit/hyperactivity disorder (2007)	28
Slovakia	28
A healthcare worker with a decreased physical ability asked for a different suitable assignment (2019)	28
Slovenia	29
A public rehabilitation program failed to provide reasonable accommodation to persons with disabilities that require an assistant to benefit from it (2019).....	29
Sweden.....	30
A deaf person was excluded from a recruitment process that mainly entailed phone-use (2020)	30
A court found direct discrimination due to the uncertainty created by a school regarding adequate support to a child with autism (2019)	30
A school failed to investigate accessibility measures for a pupil with disabilities in due time (2019)	30
A school refused a request of a pupil with dyslexia to use digital reading tools during a reading test (2019)	30
Assessment on the reasonability of the measures that had been taken to make sure an audio induction loop worked (2019)	31
A wheelchair user cannot board a bus and it is not offered and alternate means of transportation (2018)	31
A university rejected a deaf job applicant according to financial considerations (2017).....	31
A school failed to take suitable measures for a pupil who was a wheelchair user in due time (2017) ..	32
A company denied accommodations to a bus driver who suffered a stroke due to practical circumstances and potential impact on other employees (2013)	32

Introduction

In 2020, Equinet's working group on Equality Law analysed the topic of reasonable accommodation for persons with disabilities. The ensuing Discussion Paper builds upon the work done by [Equinet in 2014](#) and the more recent background work done in order to submit, in July 2020, Equinet's [third-party intervention](#) in the case of [Toplak and Mrak v Slovenia](#). On the basis of this prior work, the Equality Law working group decided on main issues that needed to be explored further in [this Discussion paper](#) that aims at giving a comparative view of the main identified problematic issues in the field of reasonable accommodation for persons with disabilities to serve as a resource and practical guide to Equality Bodies and other interested stakeholders.

[Discussion Paper](#)

The introduction to this discussion paper explores the **applicable legal framework**, including the UNCRPD, CoE instruments and EU law and the most relevant case-law. Additionally, the lack of awareness among duty bearers and the general public is explored regarding the issues to be explored in the following chapters.

The first chapter addresses the **difference between reasonable accommodation and accessibility**, concluding that even if in the legal framework these measure are easily distinguishable, practice is not as clear but due to the apparent lack of case law, it is difficult to pinpoint what are the causes of this. Nevertheless, it is apparent that the concepts of reasonable accommodation and accessibility are complementary and can strengthen each other towards better equality.

The second chapter dwells on the scope of the **duty of reasonable accommodation**, providing an overview of the requirements of the reasonable accommodation duty in EU law, under the CRPD and through the analysis of some trends in how the duty is implemented at national level. The chapter concludes that there is an overall lack of clarity on the parameters of what is considered to be reasonable. Differing views were offered as to the extent to which this is problematic in practice, balancing out the pros and cons of having more concrete guidance or having the freedom and flexibility to choose in each case.

In the third chapter, the focus is on the procedural aspects regarding who has **responsibility for designing a reasonable accommodation measure**. The author concludes that these procedures are mainly regulated at national level with a varying complexity, in which the CRPD Committee's recommendations can serve as a compass for the parties involved and the national adjudicating bodies.

This Discussion paper is complemented by this **Annex that compiles relevant case law** regarding the topic of the publication, on the basis of which the analysis was done.

Belgium

[Refusal of reasonable accommodation and contract termination of a cancer-recovering employee \(2018\)](#)

Conclusion: Discrimination

Field: Employment

The claimant initiated legal proceedings against his employer for discrimination on the ground of disability. After an absence for almost two years because of cancer, the employee asked for a progressive resumption

of work, including an adapted schedule. However, the employer decided to terminate the employment relationship due to lack of suitable work for her and therefore refusing to make reasonable accommodations. The Labour Court upheld the lawsuit stating that as the disability was known or should have been known by the employer, the claimant could hope for reasonable accommodations. It also found that the adaptations in the form of progressive resumption of work did not constitute an unreasonable burden for the respondent. Besides, the respondent failed to request the intervention of the prevention advisor-occupational physician within the framework of the promotion of employment opportunities to propose a different or adapted work at the employer. The Court, therefore, concluded that the employer violated anti-discrimination laws.¹

Failure to investigate possible reasonable accommodation measures for an overweight job applicant (2016)

Conclusion: Discrimination

Field: Employment

The Labour Court of Liège confirmed the previous conviction of an employer for discriminating against a job applicant because of his overweight. The respondent, a driving school, considered that the candidate's overweight was an obstacle to his engagement as a car instructor.

Once the disability had been proven, the Court stated that the employer must take steps to at least examine the feasibility of the requested accommodation and demonstrate the measures undertaken. Since the respondent failed to demonstrate they had investigated the possibility to purchase the adapted car requested and failed to prove the undue burden, the Court ratified the first instance judgment, establishing direct discrimination based on two criteria – disability and physical characteristic. The Court ordered the employer to pay three months gross remuneration as a compensation for the rejected candidate.²

Croatia

Recommendations on the provision of reasonable accommodation for a job applicant with an intellectual disability (2020)

Conclusion: Discrimination

Field: Employment

A municipality asked the Office of the Ombudswoman for guidance about how to achieve reasonable accommodation for an applicant who had intellectual disability and was illiterate in a job recruitment procedure for cleaners which entailed written and oral tests according to the administrative regulation. This request allowed the equality body to clarify i) that the legal provision which lays down the reasonable accommodation duty is *lex specialis* as regards the regulations concerning recruitment procedures and, therefore, must take precedence over the latter, ii) that adjustments should be made not only regarding the form but also the content of the testing and iii) that reasonable accommodation does not put people with disabilities in a privileged position in the selection process, but provides them with equal conditions and equal opportunities for employment compared to people without disabilities.³

¹ Belgium, Labour Court Brussels, 20 February 2018, [2016/AB/959](#).

² Belgium, Labour Court of Liege, 26 June 2016, [R.G. 15/167/A](#).

³ Croatia, Office of the Ombudsman, 28 September 2020, POSI-1.9.4.-1090/20-12-02

Discrimination on the grounds of unjustified denial of reasonable accommodation (2016)

Conclusion: Discrimination

Field: Employment

The claimant, a lawyer from Rijeka who is a person with disabilities and a wheelchair user, brought a suit against the Republic of Croatia claiming that the State had discriminated him on the basis of his disability by denying the provision of reasonable accommodation by placing the Administrative Court in Rijeka in a building which does not have appropriate access to persons with disabilities.

In its response, the State argued that it offered the claimant two different solutions: to cross few steps at the entrance of the building through the joint efforts of the court staff and the prosecutor's entourage, as well as offering him the opportunity to hold hearings in one of the other courts that have easier access for persons with disabilities. The claimant declined both offers.

The Municipal Court in Rijeka upheld the lawsuit stating that the proposal offered to the claimant to be carried by the court staff over the steps at the entrance, cannot be considered as a reasonable accommodation in terms of human dignity and respect for the right to equal opportunity. The Municipal Court established discrimination on the grounds of unjustified denial of reasonable accommodation, ruling afterwards confirmed by the County Court in 2017.⁴

Czechia

Failure to install a remote opening of the entrance door to the building (2020)

Conclusion: Discrimination

Field: Housing

The complainant who has a particularly severe disability and suffers from cardiovascular problems asked to set up a remote opening of the entrance door to the building where she lived (in a flat). The complainant was afraid that in the event of an unexpected medical complication, she would not be able to take the elevator down and open the entrance door for the ambulance service. For this purpose, she was willing to pay the costs of setting up the remote opening from her resources. However, the complainant's proposal for the installation of the facility was denied by the housing association alleging fear of reduced security in the building.

The Czech Public Defender of Rights assessed the case and concluded that the housing association had committed indirect discrimination on the ground of disability by not allowing the complainant to install a remote front door. According to the Public Defender of Rights, the need to take reasonable action did not impose a disproportionate burden. Given that the complainant was willing to pay for the installation, this measure did not represent a financial burden. Furthermore, the Public Defender of Rights also stated that the alternative measures proposed by the respondent were not suitable in this specific case. These measures included: the opening of the entrance door using a chip which, however, would affect how quickly health professionals would be able to assist the complainant; and the setting up of a 'panic button' which similarly would also affect the speed of providing medical assistance to the complainant. The Public Defender of Rights also noted that the evidence put forward by the housing association in question did not show that the remote opening of the entrance door for the needs of the complainant could significantly worsen the security situation in the building.⁵

⁴ Croatia, Municipal Court in Rijeka; 30 May 2016, [P-102/15](#); partially altered and confirmed by County Court in Pula, 27 March 2017, Gž-67/17-2.

⁵ Czech Republic, Public Defender of Rights, 2020, [File No.: 3737/2019/VOP](#)

Denial of redeployment of an employee with disabilities (2019)

Conclusion: Discrimination

Field: Employment

The claimant worked for the Prison Service in Czechia as an educator therapist. Due to his disabilities, the claimant asked to be transferred to another prison unit of the employer which was closer to his residence. While the director of his original prison approved the transfer, the deputy director of the later prison did not consent. As a result, the claimant had to terminate his employment because his medical condition did not allow him to commute regularly to the prison, which was almost 300 km far away from his place of residence. He then referred to the Czech Public Defender of Rights claiming discrimination on the grounds of age and disability.

The Czech Public Defender of Rights concluded that the collected documents showed that the Prison Service of Czechia committed indirect discrimination against the claimant on the grounds of disability. It stated that the employer should have taken reasonable measures to allow the claimant to be transferred to a job closer to his place of residence. According to the Czech Public Defender of Rights, such procedure would be useful for the employee and not impose a disproportionate burden on the employer, in particular, because the employer was hiring on a position the employee was working on in the original prison, the transfer would be financially bearable and because there was no other alternative measure in this case.⁶

Request for reserved parking by a person with a disability (2018)

Conclusion: No discrimination

Field: Goods and services

In 2016, the claimant, a person with severe functional disability, asked the local authority for a reserved parking space in front of his house. The request was rejected by the City Council. The claimant brought the case before the Public Defender of Rights stating that the non-consent of reserved parking by the municipality falls under indirect discrimination on the grounds of disability.

However, the Public Defender of Rights concluded that the case does not constitute discrimination within the meaning of the Czech Anti-Discrimination Act. According to the Public Defender of Rights, the municipality is only obliged to take appropriate measures in the form of consent if there are obstacles that a person with a disability could not overcome with the help of their resources, such as parking spaces at their disposal. Given the fact that the claimant is not an active driver neither was the owner of a vehicle, and he had two parking spaces belonging to his land plus two other spaces in the proximity of his home that could be used for stopping without any problems; the Public Defender of Rights stated that no obstacle would prevent people from parking in the immediate vicinity of his home for his transport.⁷

Prohibition of food consumption in the school cafeteria to celiac students (2017)

Conclusion: Discrimination

Field: Good and services

The case involved the complainant's daughter, who suffers from celiac disease, and her school. In this case, the school did not provide her with an adequate diet, nor did allow the consumption of other food in the canteen.

In assessing whether the school indirectly discriminated the complainant's daughter by failing to provide diet to pupils with special dietary needs, the Public Defender of Rights pointed out that the evidence gathered was insufficient to reach a conclusion. Furthermore, it stated that whether the food preparation would be a

⁶ Czech Republic, Public Defender of Rights, 21 January 2019, [File No.: 7571/2017/VOP](#).

⁷ Czech Republic, Public Defender of Rights, 28 March 2018, [File No.:1370/2017/VOP](#).

disproportionate burden on the school needed to be assessed with a closer knowledge of the costs and possibilities.

However, the Public Defender of Rights found that not allowing students with special dietary needs to eat lunch in the school cafeteria was direct discrimination on the grounds of disability. In its decision, the Public Defender of Rights concludes that there is no reason to exclude pupils from the school canteen to consume food they brought themselves which would be justified in this case. It also noted that such exclusion separates pupils with special dietary needs from the rest of the pupils.⁸

Finland

Denial of a request for free school transport for a child with disabilities (2020)

Conclusion: Discrimination

Field: Education

This case concerns a child who had been diagnosed with a rare inherited disease, which included concentration problems and considerable difficulties in impulse control. In 2016, the child started first grade at the nearest primary school to his home. Shortly after school began, B's family moved to the enrollment area of another primary school.

Following the criteria for determining and enrolling a pupil's place of study approved by the Education Committee of the city, it was decided that, despite the change, that the child was entitled to attend all grades in his prior school. Under the Basic Education Act, the decision required the child's guardians to bear the costs of transporting or escorting the pupil to school.

In February 2018, B's guardian applied for a school transport grant to primary school as a free joint taxi transfer for health reasons. However, the application was rejected because the child's elementary school was not the nearest local school. The child's guardian appealed the decision to the Helsinki Administrative Court, which dismissed the appeal. Consequently, the guardian appealed to the Supreme Administrative Court of Finland.

The Supreme Administrative Court assessed the case and concluded that the city should have granted B free school transport to his primary school under the Basic Education Act as reasonable accommodation within the meaning of Section 15 of the Non-Discrimination Act. The court considered that according to the evidence obtained, B needed the most stable living conditions possible to ensure positive overall development because of his rare hereditary disease. The stress of changing familiar school environments, teachers and students would likely greatly exacerbate his impulsive behavioural symptoms. The court also noted that the wording of Section 32 (3) of the Basic Education Act is clear in itself, according to which, the decision to admit a pupil to a school or place of education other than that referred to in Section 6 (2) of the Act (local school) may be made under the condition that the guardian bears the costs of transporting or accompanying the pupil. This condition was also made in the admission decision dated September 2016.

The court concluded that given that the journey from the child's home to his primary school is approximately the same as the journey to the primary school which should be his local school and that the cost of transporting the child and his brother to primary school would be around € 5,600 school year, transportation costs could not be considered unreasonable.⁹

⁸ Czech Republic, Public Defender of Rights, 23 August 2017, [File No.:6059/2015/VOP](#).

⁹ Finland, The Supreme Administrative Court, 28 May 2020, [KHO:2020:60](#).

Failure to install a ramp for an electric wheelchair within reasonable time (2019)

Conclusion: Discrimination

Field: Goods and services

The applicant, who used a wheelchair due to his disability, considered that he had been discriminated against when the defendant company's store (a public limited liability company) did not make the reasonable accommodations necessary for him to be able to access the store. According to the applicant he had not been able to get inside with his electric wheelchair despite there being a ramp at the entrance because there was a 10-15 cm threshold. On 19 June 2018, the applicant asked the company to obtain another ramp and on 28 June 2018, he inquired again. According to the applicant, the company had at that time replied that the change would be implemented only in connection with the renovation of the shopping centre. According to the company, they had ordered another ramp to the store as a result of the inquiry, which was to arrive in July-August 2018.

The National Non-Discrimination and Equality Tribunal of Finland held that since the company had not undertaken the accommodation requested by the applicant prior to the major renovation, there was a presumption that the reasonable accommodation measure requested by the applicant had been refused. The tribunal stated that the refusal of reasonable accommodation is considered discrimination within the meaning of Section 8 (2) of the Equality Act. Reasonable accommodation should be made within a reasonable time from the accommodation request.

According to the evidence received, the second ramp was not installed at least until July 2018. The company had stated that it had ordered a ramp that would not be installed until July-August 2018, more than a month after the accommodation request. The tribunal considered that the defendant had not made the requested accommodation within reasonable time. The tribunal concluded that the company had denied the applicant reasonable accommodation needed by him and thus discriminated against him because of his disability. The tribunal prohibited the company from continuing or renewing discrimination against the applicant.¹⁰

Denial of the right to use one's assistant when voting as a denial of reasonable accommodation (2018)

Conclusion: Discrimination

Field: Other

The applicant was not allowed to use his assistant when voting, instead having a general election assistant voting with him. The applicant explained that he had not been able to express his will due to the rapid progress of the situation and that he had the impression that the presence of a general election assistant was his only way for voting.

In its decision, the National Non-Discrimination and Equality Tribunal of Finland referred to Article 29 of the Convention on the Rights of Persons with Disabilities, which provides that State Parties shall ensure the free expression of the will of voters with disabilities and, to this end, allow at their request when necessary, to have a personal assistant to vote.

The National Non-Discrimination and Equality Tribunal of Finland concluded that the respondent had denied the applicant the reasonable accommodation he required and thus discriminated against the applicant based on his disability. The tribunal stated that to guarantee the applicant's equal right to vote, the election assistant should have taken active steps to clarify the applicant's voting rights under sections 5 and 15 of the Equality Act. It also pointed out that it would have been necessary to communicate with the applicant about

¹⁰ Finland, The National Non-Discrimination and Equality Tribunal, 14 April 2019, decisions [395/2018](#), [400/2018](#), [435/2018](#), [509/2018](#).

his wishes and to ascertain whether the applicant was able to make a vote and what kind of assistance he needed.

In addition, the tribunal argued that in making a discretionary benefit decision, the authority should apply the non-discrimination provisions of the Non-Discrimination Act, and emphasized that reasonable accommodations need to be decided on a case-by-case basis responding to the needs of the disabled person in question and that authorities need to interpret and apply the obligation to provide reasonable accommodation according to Section 15 of the Non-Discrimination Act per Article 22 of the Constitution of Finland. According to Article 22 of the Constitution of Finland: The public authorities shall guarantee the observance of basic rights and liberties and human rights.¹¹

Denial of reasonable accommodation for a disabled passenger in need of extra space in an airplane (2017)

Conclusion: No discrimination

Field: Goods and services

A person with physical disabilities who needed extra space in the airplane due to a leg was asked to pay the price of three basic seats by Finland's national airline company Finnair.

The applicant had contacted the airline's service call line for customers with special needs two months before the planned travel time to buy a flight ticket. The airline company had informed the customer that they were not able to offer a flight where there would be enough space for the customer to sit in one seat. The customer was informed that the only way to travel would be to book three adjacent seats and to pay for the price of basic tickets for these three seats.

The Non-Discrimination Ombudsman took the case to the national Non-Discrimination and Equality Tribunal of Finland which considered that the company had failed to make reasonable accommodations. The tribunal argued that taking into consideration the relative expensiveness of air tickets for an individual consumer and that the nature of flight services departs from daily service, the disabled customer access to services was completely blocked due to the price. The tribunal considered that the commercial basis of the company's operations and the freedom to set prices could not, as such, release the company as a provider of goods and services from the obligation under the Non-Discrimination Act to make reasonable accommodations. Even if a free ticket or a significant reduction in the price of a ticket would result in a loss of revenue for the company, the ability of both parties to cope with the loss caused by the ticket price had to be assessed. Given the specific nature and presumed rarity of the injury suffered by the customer involved, and the case-by-case nature of the reasonable accommodation, the reasonable accommodation required in the case did not, more generally, affect the company's freedom to set prices. The tribunal also regarded relevant that the company is a listed state-owned company with a significant turnover. The Tribunal referred to the CRPD in its ruling, stating, inter alia, that the accommodation made by a transport company may have a significant impact on the exercise of freedom of movement under Article 18 of the CRPD.

The national airline company appealed against the decision to the Administrative Court and the decision of the Tribunal was overruled by the Helsinki Administrative Court. The Helsinki Administrative Court ruled that as there was no other way for the airline company to accommodate the service in this case than concerning the price, and as the obligation to provide reasonable accommodation laid down by the Non-Discrimination Act does not impose an obligation to accommodate in the form of price reductions the airline had not violated the prohibition of discrimination. The court stated that in light of the wording of the Non-Discrimination Act, the preliminary works of Section 15 and the important right of service providers to decide on the pricing of the goods they offer (based on the freedom of contract and the freedom to conduct a

¹¹ Finland, The National Non-Discrimination and Equality Tribunal, 23 October 2018, [YVTitk 396/2018](#).

business) unless otherwise provided for in the legislation, the company was not obliged to make an accommodation by means of price reductions for tickets. The court also referred to the part of the Non-Discrimination Act's preliminaries of Section 15 in which it is stated that accommodations are typically small-scale changes in, for example, operating manners and in the organisation of services.

The Non-Discrimination Ombudsman appealed the decision to the Supreme Administrative Court, where the case is currently pending.¹²

[Lack of access to a mobile display apartment \(on a pallet trailer\) for a person in a wheelchair \(2017\)](#)

Conclusion: Discrimination

Field: Goods and services

The applicant, a person with disability and a wheelchair user, considered that the defendant company had discriminated against him indirectly when he had not been able to enter onto a pallet trailer showroom which had been assembled by the company.

The National Non-Discrimination and Equality Tribunal of Finland found that a large company like the defendant should, when providing services, anticipate that people want to make extensive use of its services. The tribunal held that the defendant should have ascertained in advance that using a mobile demonstration apartment does not lead to discrimination. The fact that the applicant would have had access to information about the apartments in other ways was not on the tribunal's view relevant to the assessment, as those practices were not similar enough services to a demonstration apartment. Because the practice of the defendant which was presented as apparently neutral had resulted in the applicant not being able to use a service publicly offered by the defendant equally with other persons due to his disability, the tribunal found that the defendant had indirectly discriminated against him. Because the applicant had not claimed reasonable accommodations, any reasonable accommodations made by the defendant were not assessed. The tribunal prohibited the defendant from renewing the discriminatory practice.¹³

[A website incompatible with a screen-reader \(2017\)](#)

Conclusion: Discrimination

Field: Good and services

The applicant who had a visual impairment considered that he had been discriminated against because the instructions for using transport services which were on the website of Rovaniemi City Travel Service Center were not readable by a screen-reader and because he had been advised by the Service Center to make transport service orders by phone.

The National Non-Discrimination and Equality Tribunal of Finland considered that the City Travel Service Center had indirectly discriminated against the applicant on the basis of his visual impairment when the instructions for transport users on the Service Centre's website were not readable by a screen reader. In addition, the tribunal found that the city had failed in its duty to promote equality within the meaning of Section 5 (1) of the Non-Discrimination Act by failing to consider the need for reasonable accommodations in the light of the applicant's feedback to the Travel Service Center. The tribunal prohibited the city from continuing to discriminate against the applicant or other persons and rejected the application in other respects.¹⁴

¹² Finland, The National Non-Discrimination and Equality Tribunal, 20 April 2017, [102/2016](#). Helsinki Administrative Court 20 December 2019, 04815/17/1205.

¹³ Finland, The National Non-Discrimination and Equality Tribunal, 29 May 2017, [158/2016](#).

¹⁴ Finland, The National Non-Discrimination and Equality Tribunal, 20 April 2017, [152/2016](#).

Denial of unemployment benefits for a disabled person for the duration of their studies (2015)

Conclusion: Discrimination

Field: Social benefits

The applicant is a person with a disability who did not consider himself or herself able to work full-time in the job for which he or she was trained. After being accepted to study as a special needs teacher at Abo Akademi University, the applicant considered that there were special reasons for him/her to have been granted unemployment benefit for the duration of his/her studies. However, the Employment and Economic Development Office issued a binding employment policy statement which made the applicant not entitled to unemployment benefit because (s)he was studying full-time.

The National Non-Discrimination and Equality Tribunal of Finland found that the Employment and Economic Development Office had failed in its duty to make reasonable adjustments in accordance with section 15 of the Equality Act. The tribunal pointed out that according to Section 15 of the Equality Act, the authority must make appropriate and reasonable adjustments necessary in each case so that a person with a disability can do business with the authorities on an equal basis with others, perform job duties and advance in their career. Moreover, the National Non-Discrimination and Equality Tribunal of Finland held that the wording of Section 15 of the Non-Discrimination Act does not require such an obligation to be conditional to the person with a disability requesting the measure (to provide reasonable accommodation).¹⁵

Germany

Violation of the duty of the public employer to invite for an interview (2020)

Conclusion: Discrimination

Field: Employment

The defendant, a public employer, carried out a two-stage application process and rejected the plaintiff at the first stage after a selection interview. The plaintiff therefore asserted compensation in accordance with Section 15 (2) of the AGG on the basis of a disadvantage due to a disability because, contrary to the legal obligation from Section 82, sentence 2, SGB IX old version, he was not invited to all parts of the interview. The court declared that Article 5 of Directive 2000/78 / EC as well as Article 5 (3) and Article 27 (1) UN CRP required that the term “job interview” in Section 82 sentence 2 of Book IX of the old version be interpreted broadly that it - even with multi-stage selection processes - basically includes all procedures that the employer designs in order to get a comprehensive picture of the applicant. This is the only way to effectively address the concerns of Directive 2000/78 / EC and the UN CRPD.¹⁶

Denied request for provision of interpreters by a state university for a master's deaf student (2018)

Conclusion: No discrimination

Field: Education

The claimant, who suffered late deafness and the deterioration of her hand and fine motor skills, had asked the defendant, a state university, to provide an interpreter and to assume the costs during the master's course she was taking. The defendant rejected the request.

The claimant filed a lawsuit arguing that the legal institution of “reasonable accommodation” is a subjective right and that the public administration has a duty to ensure accessibility. The claimant stated that the defendant was obliged to design the teaching and study conditions so that students with disabilities are given equal and effective participation in higher education in the same way as students without disabilities.

¹⁵ Finland, The National Non-Discrimination and Equality Tribunal, 14 December 2015, [YVTltk 21/2015](#).

¹⁶ Germany, Federal Labour Court, 27 August 2020, [8 AZR 45/19](#).

The Halle Administrative Court held that it was clear that the claimant had a right for reasonable accommodation. However, the defendant did not receive any financial support from the state of Saxony-Anhalt and had a limited annual budget available for disabled students in the amount of €30,000, which would be used up entirely by the claimant if the written interpreter requested was provided. The Court, therefore, found that the measure requested was disproportionately burdensome.¹⁷

Failure to accommodate the specific and special needs of a person with autism in a framework of social welfare integration assistance for persons with disabilities (2016)

Conclusion: Discrimination

Field: Social benefits

The claimant, who suffers from Asperger's autism with considerable impairment of communication skills, had agreed on a monthly personal budget as part of the integration assistance for disabled people. For this purpose, he wanted to engage a specific service provider for daycare. His request was denied on the basis that the service provider did not meet the requirements established by Section 75 (3) SGB XII a.F. because the service provider had not concluded a performance and remuneration agreement with the social welfare office, and he filed a lawsuit with the social court. The court noted that Section 74 (4) SGB XII a.F. expressly allows the provision of services by a service provider that does not meet the requirements established, if "this is necessary in the circumstances of the individual case".

Therefore the Court rejected the defendant's argument stating that they had a duty to carry out an official investigation to clarify whether the plaintiff was receiving appropriate support from his chosen service provider in the context of a case-by-case decision. a. F. The court concluded that the defendant in its assessment of the case did not take into account the disabled person with his specific needs and special needs.¹⁸

Inquiring during a job interview about a candidate's disability does not necessarily lead to discrimination (2016)

Conclusion: No discrimination

Field: Employment

This case concerns the claim against an unsuccessful outcome of a job application procedure based on the presumption of discrimination on account of the candidate's severe disability. The claimant argued that being questioned during the interview about his walking disability resulted in a different assessment by the job poster.

The court noted that inquiring about the restrictions resulting from a disability stated in the application documents does not establish facts from which it may be presumed that there has been discrimination as long as the intention of the employer is to fulfil the obligation to provide "reasonable accommodation". The court stated that when assessing such demand in the context of disability, it must be ensured that the achievement of the objective pursued by Directive 2000/78/EC is not impaired. The question must therefore have an objective - and desirable - reason to be set out at the beginning of the demand.¹⁹

¹⁷ Germany, Administrative Court Halle, judgment of 20 November 2018 [6 A 139/17 HAL](#)

¹⁸ Germany, Mannheim Social Court, 2 August 2016, [S 9 SO 3871/15](#).

¹⁹ Germany, Federal Labour Court, 26 June 2014, [8 AZR 547/13](#).

Dismissal which discriminates against an employee with HIV infection (2013)

Conclusion: Discrimination

Field: Employment

The claimant, a chemical-technical assistant who had been dismissed by the defendant, claimed that the dismissal discriminated against him because his HIV infection was the sole reason for termination. In response, the defendant stated that the dismissal was unavoidable for reasons of occupational safety.

The court noted that it is only at the level of reasonable accommodation that a decision can be made as to whether and how a disability affects working life, and that the determination of the disability must, nevertheless, precede the assessment of what precautions are reasonable for the employer in the specific case. The court held that in the case of a disabled person suffering from an infectious disease, the employer has to take reasonable precautions enabling the disabled person to work, in addition to being able to prevent any possible risk of infection.

The court pointed out that the aim of the General Equal Treatment Act is to prevent from disadvantages resulting from “merely diffuse fears”. Before the employer comes to the conclusion that a person cannot be employed because of his or her disability it is necessary “to identify the concrete risks and even to consider possible changes in the work process to make an employment possible. The appeal was allowed and remitted to the Regional Labour Court.”²⁰

Great Britain

A person with depression claims that the insurance company’s refusal to transfer repayment mortgage to interest-only is discriminatory (2019)

Conclusion: No discrimination

Field: Goods and services

After losing her job, the complainant claimed on an insurance policy to cover her mortgage repayments. Her claim was initially on the basis that she was unemployed and later that she was depressed and could not work. When her insurance coverage ran out, she was unable to meet the monthly repayments. Some months later the mortgage company began proceedings to repossess her home.

The complainant applied to the mortgage company to transfer her repayment mortgage to one which was interest-only. This would have reduced her monthly payment sufficiently for her housing benefit to cover it. Her request was refused. She brought a claim under the Equality Act, arguing that the mortgage company had failed to make reasonable adjustments on the grounds of her depression. The case was unsuccessful. The England and Wales Court of Appeal found that the complainant had not been put at a substantial disadvantage on the grounds of her medical condition. The mortgage company’s refusal to transfer her to an interest-only mortgage was not discriminatory as the policy did not “bite harder” on disabled borrowers compared to a non-disabled borrower.²¹

²⁰ Germany, Federal Labour Court, 19 December 2013, [6 AZR 190/12](#).

²¹ Great Britain, England & Wales Court of Appeal (Civil Division), 20 April 2018, [Green v Southern Pacific Mortgage Limited \[2018\] EWCA Civ 854](#).

Failure to take measures for a nine-year-old student with Asperger's diagnosis (2018)

Conclusion: Discrimination

Field: Education

This case was taken by the mother of a nine-year-old child who had been excluded from school on a few occasions following behaviour that was linked to his Asperger's diagnosis. Due to his disability, his distress tended to build up and the interventions made by the school did not de-escalate matters, which led to him lashing out and ultimately being excluded. The First-Tier Tribunal for Scotland Health and Education Chamber granted the claim on the basis that measures requested would have been of benefit in the risk assessment process and in clarifying strategies to anticipate difficulties. It also noted that the staff was not equipped to recognize signs of growing anxiety. Therefore, the Tribunal granted measures, including an apology to the family, training of staff and reviewing guidance.²²

"Very intense" inquiries about employee's disability led to discrimination (2018)

Conclusion: Discrimination

Field: Employment

An employee with type 1 diabetes who was left feeling "intimidated, under the spotlight and concerned for her job" when her employer made very intense inquiries about her disability was awarded £14,000 for disability discrimination and harassment. The Employment Tribunal conceded that the claimant's performance "had not been perfect". However, the employer's allegations about the claimant's competence were not substantial enough to warrant dismissal. The employment judge ruled: "It is our judgment that the main reason for the claimant's dismissal was her disability. It is also this tribunal's judgment that a person with a different disability, with the claimant's level of competence, (making the same level of mistakes that she did) would not have been dismissed. The respondent would have monitored her performance, given her feedback and opportunities to improve and ultimately confirmed her appointment."²³

Failure to adopt reasonable accommodation measures and dismissal of an employee with disabilities due to health and safety breach is discriminatory (2018)

Conclusion: Discrimination

Field: Employment

The claimant worked installing sky TV equipment. He was found to be at the top of an unsecured ladder and was dismissed from his post as this was a health and safety breach. He argued that he was suffering from anxiety and depression which impacted on his concentration. The application of conduct policy to health and safety breaches which requires that any health and safety policy breach be treated as gross misconduct. This policy put the claimant at a substantial disadvantage as non-disabled employees not experiencing difficulties with memory and concentration would not be placed at this disadvantage. The claimant proposed that it would have been reasonable to have not dismissed him but to take disciplinary sanctions. The Employment Tribunal upheld the claim considering that the employer did have constructive knowledge of the employee's disability and they failed to put in place support.²⁴

²² Great Britain, First Tier Tribunal for Scotland Health and Education Chamber in [McGibbon v Glasgow City Council](#), 2018.

²³ Great Britain, The Employment Tribunal, 16 October 2018, [Carr v Weston Homes](#), 3201540/2017

²⁴ Great Britain, Employment Tribunal England and Wales, 20 December 2019, [Plowright v Sky In Home Services](#), 1810176/18.

[Failure to provide a reasonable job alternative for a disabled employee \(2016\)](#)

Conclusion: Discrimination

Field: Employment

After the Claimant became disabled through a back injury the Respondent gave him work in a new role ("key runner") at his existing rate of pay and led him to believe that the role was long-term. The following year, however, it said that it was only prepared to employ him in this role at a reduced rate of pay; and when the Claimant refused to accept these terms he was dismissed. The Employment Tribunal rejected the Claimant's contention that there must have been a contractual variation in this case, given that his rate of pay remained unchanged for the 12 months or so during which he was working to amended duties. However, they did find that the Respondent discriminated against the Claimant by failing to make reasonable adjustments and by dismissing him because they dismissed him for his refusal to agree to a lower rate of pay. Both parties appealed. The Employment Appeal Tribunal then dismissed the appeal and upheld the Employment Tribunal's conclusion.²⁵

[Decision on employer's duty regarding actual or constructive knowledge of an employee's disability \(2016\)](#)

Conclusion: Discrimination

Field: Employment

Mr. Gallop was an employee of Newport City Council and had complained of work-related stress. The council's Occupational Health advisors advised he was suffering from a stress-related illness but said he was not disabled. During the following two years Mr Gallop took long periods of absence due to work-related stress. The local authority asked the Occupational Health advisors whether the Disability Discrimination Act was applicable to Mr. Gallop and were told that it was not. The local authority eventually summarily dismissed Mr Gallop for gross misconduct.

Mr. Gallop made a claim for unfair dismissal and disability discrimination. The tribunal dismissed his claim on the finding that the local authority didn't have constructive knowledge of that disability. The Employment Appeal Tribunal upheld the decision. However, Mr. Gallop appealed once again, which the Court of Appeal allowed arguing that employers must come to their own conclusions about whether an employee is disabled or not and should not blindly adopt an Occupational Health report.²⁶

[An employee with disabilities claims Company's attendance policy is discriminatory \(2015\)](#)

Conclusion: No discrimination

Field: Employment

Ms Griffiths was an administrative officer who had long periods of sickness absence from work because of her post-viral fatigue syndrome and fibromyalgia. It was common ground that she was a disabled person. Under the respondent's attendance policy her absence had triggered a "written improvement warning". She took out a grievance seeking that the warning is withdrawn and that in the future the number of days of absence that would activate the usual attendance policy provisions should be increased. The grievance was rejected, and she brought a reasonable adjustment claim. The England and Wales Court of Appeal refused her claim stating that the adjustments sought went beyond what was reasonable.²⁷

²⁵ Great Britain, Employment Appeal Tribunal 26 August 2016, [G4S Cash Solutions v Powell Appeal](#) No. UKEAT/0243/15/RN.

²⁶ Great Britain, Employment Appeal Tribunal, 4 March 2016, [Gallop v Newport City Council](#) UKEAT 0118_15_0403.

²⁷ Great Britain, England and Wales Court of Appeal, 15 May 2014, [Griffiths v Secretary of State for Work and Pensions](#), [2015] EWCA Civ 1265.

Wheelchair space use policy of a bus (2015)

Conclusion: Discrimination

Field: Goods and services/transport

Mr Paulley is a wheelchair user. He flagged down a bus at a bus stop but there was a child in a pram blocking the wheelchair space on the bus. The driver asked the mother to move the pram. She refused. Mr Paulley was unable to board. The bus company had a policy that wheelchair users could use the wheelchair space on its buses on a first-come-first-served basis. This placed Mr Paulley and other wheelchair users at a substantial disadvantage compared to passengers who were not disabled. FirstGroup could have made to eliminate the disadvantage: (i) altering the Notice positively to require non-disabled passengers occupying a space to move if a wheelchair user needed it; and (ii) adopting an enforcement policy requiring non-disabled passengers to leave the bus if they failed to comply. The U.K. Supreme Court allowed the appeal but only to the extent that FirstGroup's policy requiring a driver to simply request a non-wheelchair user to vacate the space without taking any further steps was unjustified. Where a driver who has made such a request concludes that a refusal is unreasonable, he or she should consider some further step to pressurise the non-wheelchair user to vacate the space, depending on the circumstances.²⁸

Employment Judge failed to properly exercise her case management powers to adjourn an oral application for a review (2014)

Conclusion: Discrimination

Field: Employment

This case concerned an interesting point on the extent to which the UNCRPD could be used to ensure that the disability-related requirements of a person with disabilities must be taken into account by an employment judge considering an adjournment even though there is an exemption from the equality act for judicial functions. The appellant contends that the failure to adjourn the hearing was a failure to make a reasonable adjustment or reasonable accommodation on account of his disability. It is accepted that Section 29 of the Equality Act 2010, which imposes such obligations in respect of services and public functions, does not apply to judicial functions (Schedule 3 Part 1 paragraph 3 to the Act). In its judgment, the Employment Appeal Tribunal stated that the tribunal does not need to adjudicate upon the extent to which the specific statutory exemptions in the Equality Act 2010 are affected by what is said to be the incorporation of the UNCRPD into domestic UK law. Alternatively, the tribunal noted that it is sufficient that they agree and accept that the fact of the appellant's disability, as known to the employment judge, was an important factor to which she had to have regard when making case management decisions by the overriding objective and reflecting good practise as advised by the Equal Treatment Bench Book.²⁹

Failure to redeploy a disabled employee (2004)

Conclusion: Discrimination

Field: Employment

Mrs Archibald was employed by Fife Council as a road sweeper. Following surgery was no longer able to work in a manual role. The Council looked to see if she could be redeployed in an administrative / non-manual capacity. Mrs Archibald applied for over 100 jobs internally but was unsuccessful. She felt this was because they "could not see past her having been a road sweeper." She was dismissed. The question before the House of Lords was about the permissible limits of the reasonable adjustment duty. The House of Lords stated that transferring Mrs Archibald to a sedentary position which she was qualified to fill was among the steps which

²⁸ UK, Supreme Court, [Paulley v FirstGroup PLC](#) [2017] UKSC 4. For a similar line of reasoning, see Gävle District Court, T 240-16.

²⁹ Great Britain, Employment Appeal Tribunal, 2 September 2019, [U v Butler & Wilson Ltd](#) UKEAT 0354_13_0209.

it might have been reasonable in all the circumstances for the council to have to take once she could no longer walk and sweep. If that had been done, the House of Lord further notes that her disability would no longer have exposed her to the risk of dismissal on the ground that she was not physically able to do the job that she was employed to do. Therefore, the appeal was successful and remitted to the Employment Tribunal.³⁰

Greece

[Denied a request to be exempted from afternoon and night shifts due to diabetes treatment \(2018\)](#)

Conclusion: Discrimination

Field: Employment

A nurse working in a hospital in Athens asked to be exempted from afternoon and night shifts because she was suffering from diabetes and she had to have meals and insulin injections four times each day at fixed hours. The claim was based on a medical certification, recommending that she should work at fixed shifts, however, the administration of the hospital contested the recommendation and dismissed the request.

The Greek Ombudsman stated that the claim was considered as sufficiently substantiated and, and, therefore, it could trigger the duty of the hospital, acting as an employer, to provide reasonable accommodation, i.e., to employ the complainant at fixed shifts, unless such accommodation would impose a disproportionate burden. In its reply, the hospital reported that since 2016 there was a need to boost the nursing staff in the emergency department at afternoon and night shifts every 4 days when the hospital was on-call. For this purpose, all members of the nursing staff who were working only in morning shifts were asked to work in afternoon shifts once every 2 or 3 months, i.e., 6 times per year approximately.

Based on the information given by the hospital, The Greek Ombudsman observed that the on-call days were approximately 91 per year (365/4), therefore exempting the complainant from afternoon shifts 6 times per year would result to a need for replacement once every 15 on-call days. On this ground, the Greek Ombudsman concluded that granting the requested measure would not impose a disproportionate burden to the hospital and, therefore, the requested measure was reasonable.³¹

[Midwife, mother of a teenage child with Asperger syndrome requesting morning shifts \(2018\)](#)

Conclusion: No discrimination

Field: Employment

A midwife working in a hospital of a small Greek city was seeking to work only in morning hours, claiming that she often suffered from dizziness, due to the drugs she was taking for her high blood pressure. Also, she claimed that she was the mother of a teenage child with Asperger syndrome who had to attend special courses every afternoon and that she had to escort him. For this purpose, she had requested either to be placed only in morning shifts in the hospital or to be transferred to a community health centre which was functioning exclusively in morning hours. The personnel administration of the hospital had rejected the request, on the ground that there were only 4 midwives employed in that hospital although according to its organization there should be 7.

The Greek Ombudsman held that the hospital did not violate its obligations as an employer. Taking into account the fact that only 4 midwives were working at the hospital instead of the 7 needed, the Greek Ombudsman decided that granting either request would impose a disproportionate burden to the hospital.

³⁰ Great Britain, House of Lords 1 July 2004, [Archibald v Fife Council](#) [2004] UKHL 32.

³¹ Greece, Greek Ombudsman, 2018, case number 241861/2018.

It also found that the rejection of the request was objectively justified as a measure serving the legitimate aim of the proper functioning of the hospital.³²

Denied request for permanent morning shifts to a nurse suffering from thalassemia (2018)

Conclusion: Discrimination

Field: Employment

A nurse working in a hospital in the city of Patras since 1997, was exempted from afternoon and night shifts since 2018 following recommendations issued by the competent medical committee because she was suffering from thalassemia. In April 2018, the personnel administration of the hospital begun to place her again in afternoon shifts and dismissed a subsequent request of the nurse to return to morning shifts permanently. In dismissing the request, the hospital argued that medical committees issued non-binding administrative opinions and that her health condition had already been considered in her placement to the ophthalmologic department, where the tasks were less demanding.

The Greek Ombudsman proceeded to investigate the case, and argued that irrespective of the legal character of medical recommendations, these do justify the requested measure in the particular case, unless the requested measure constituted a disproportionate burden. In its response, the hospital offered to the complainant either to be placed at the orthopaedic department working only in morning shifts or to remain at the ophthalmologic department and working in afternoon shifts 4 times per month. The Greek Ombudsman considered that such a proposal was compatible with the duty of the hospital to provide reasonable accommodation.³³

Teacher with mobility impairment demands access to the schoolteacher's office (2018)

Conclusion: Discrimination

Field: Employment

A teacher, who had mobility impairment due to multiple sclerosis, complained to the Greek Ombudsman that she was placed in a primary school in which there was no functioning lift. As a result, she could only use the children's toilet located on the ground floor and she could not access the teachers' office located on the first floor.

The parties reached an agreement regarding reasonable accommodation measures. As a result, the teacher would only give lessons on ground floor classrooms. Moreover, the Greek Ombudsman took the opportunity to address a formal letter to the Ministry of Education, arguing that the duty to provide accommodation to employees with disabilities is complementary to the duty to comply with accessibility requirements.³⁴

Hungary

Denied treatment for the thyroid tumour at the hospital led to direct discrimination (2019)

Conclusion: Discrimination

Field: Health / Goods and services

The complainant is a person with reduced mobility who uses an electric wheelchair and can take only one or two steps on her own. When she needed radioactive iodine therapy for a thyroid tumour, she was denied treatment in hospital. The hospital and the oncology institute involved – both respondents in the case – argued that patients receiving radioactive iodine therapy need to consume a lot of fluid to remove the

³² Greece, Greek Ombudsman, 2018, case number 248376/2018

³³ Greece, Greek Ombudsman, 2018, case number 252092/2018

³⁴ Greece, Greek Ombudsman, 2018, case number 239916/2018

radioactive material from their body. The patient therefore posed a radiation risk to the nursing staff and consequently contact had to be minimized. As the complainant could not use the toilet without help, contact between her and the nursing staff could not be kept to a minimum, therefore treating her in the hospital was not possible.

The Equal Treatment Authority decided that the respondents had not fulfilled their obligation to provide reasonable accommodation when they failed to find out whether the complainant's treatment could be carried out in a hospital setting. They did not seek advice from an expert concerning whether the patient could be moved using special equipment and did not consider that special toilet seats are available for people with reduced mobility. The respondents' failure to provide reasonable accommodation constituted direct discrimination on the ground of disability.

The Authority explained in its decision that accessibility is different from reasonable accommodation. Providing accessibility is a general obligation, while reasonable accommodation must be tailored to the needs of the specific person with a disability. Reasonable accommodation requires the exploration of the individual's needs and meeting those needs if it does not contradict other legal obligations.³⁵

Ireland

[An airline failed to provide reasonable accommodation to a passenger suffering from multiple sclerosis \(2020\)](#)

Conclusion: Discrimination

Field: Goods and services

The Complainant booked 3 return flights in business class to fly to Washington DC. Two personal assistants were travelling with him to assist him throughout the flight. The Complainant suffers from multiple sclerosis and he is quadriplegic. He uses a special 5-point harness because of his disability he cannot sit upright independently in an aircraft seat without support. He travels business class because he can recline the seat and lie down preventing sore pressures from being in a sitting position during long flights. However, the airline informed him that the airline did not allow the use of the special harness in business class. The Complainant pointed out to the airline that he had already travelled in business class on three other occasions using the harness and he was informed that the policy had changed, and he could no longer use the harness in business class. He was then informed that the only place they could have accommodation for him was in economy class at the back row where the seats did not recline. The Complainant said that because it was a very important meeting he was attending, he decided he would accept the economy seat which is located at the bulkhead and did not recline. As a result of the journey, he was sore and unable to work the next day. The Adjudication Officer found that the Complainant had been discriminated against on the ground of disability and the Respondent failed to provide reasonable accommodation. The Adjudication Officer stated that there was no evidence presented to support the Respondent's contention that the Complainant was likely to cause harm to himself or others if he was allowed to travel in business class wearing the harness. The Complainant was awarded €10,000 in compensation.³⁶

³⁵ Hungary, Equal Treatment Authority, Decision No. EBH/HJF/10/54/2019.

³⁶ Ireland, Workplace Relations Commission, 2020, [A Customer v An Airline](#) ADJ-00021710

[A school's duty to provide reasonable accommodation to an employee who was refused permission to return to work following an accident \(2019\)](#)

*Conclusion: Supreme Court guidance*³⁷

Field: Employment

The appellant, Marie Daly, began work as a special needs assistant ("SNA") in the respondent school in the year 1998, also undertaking some administrative and secretarial duties. The school caters for children on the Autism Spectrum, and those with mild to profound disabilities. In July 2010, Ms Daly sustained very serious injuries in an accident and, as a result, she was paralysed from the waist down. Since then, she had to use a wheelchair and undertake an extensive course of rehabilitation. By the beginning of 2011, she wished to resume her employment and the school, as her employer, initiated an assessment process for this purpose. Following the process, the school board refused the appellant permission to return to work on the basis that she was no longer capable of carrying out the role of an SNA. The appellant submitted that she believed that no reasonable or appropriate measures were taken by the respondent to facilitate her return to work and that she was capable of fulfilling a role as an SNA and as a secretary.

The Supreme Court judgment reversed the previous decision of the Court of Appeal by setting out that reasonable accommodation can involve a redistribution of any task or duty in a job, as long as not disproportionate in the context of the employment in question. The Supreme Court points to an approach that looks at the individual's employment in the round by considering it within the wider context of its relationship to fellow workers and the workplace. The judgment sets out an expectation of consultation of employees on reasonable accommodation. The ruling states that, while not mandatory, "a wise employer will provide meaningful participation" not only with the person seeking reasonable accommodation but also with other employees concerning the role.

The case was remitted to the Labour Court for further consideration following the totality of the evidence, including further limited evidence as necessary, and in light of the Supreme Court's elucidation of the law. The Supreme Court stated that the Labour Court must ultimately determine "the extent to which it can be said that even with reasonable accommodation, the appellant can return to the position of an SNA."³⁸

[An employee with epilepsy claimed discriminatory dismissal based on his disability which was unknown to the employer \(2018\)](#)

Conclusion: No Discrimination

Field: Employment

The Labour Court examined the constructive knowledge test for employers in a case of alleged discriminatory dismissal based on disability. The claimant experienced a seizure during his probationary period as a trainee accountant. According to the claimant, he was assessed as having probable epilepsy and was prescribed anti-epileptic medication as a precautionary measure. A few months later, the claimant was dismissed based on poor performance having failed to pass his probationary period and claimed that the dismissal was due to his disability. The employer stated that they were not aware the claimant had epilepsy until the matter was referred to the Workplace Relations Commission.

The Labour Court concluded that the doctrine of constructive notice of the disability did not apply to the facts of the case. The court determined that the claimant had not been diagnosed with epilepsy and at no point had he supplied his employer with a medical certificate, nor had he discussed the management of his condition with his manager or others in the workplace except to state that the seizure suffered was a one-

³⁷ In this case the Supreme Court did not rule as to whether or not there had been discrimination on the facts of the case. The Supreme Court provided some clarification as to the scope of the duty of reasonable accommodation in the employment context and then reverted the case back to the Labour Court for determination on the facts.

³⁸ Ireland, Irish Supreme Court, 2019, [Nano Nagle School v Marie Daly](#) [2019] IESC 63 (partly assenting/dissenting judgment)

off occurrence. The court noted further that despite numerous queries regarding his health, he was reluctant to discuss it. The court did not dispute that if the claimant had been diagnosed with epilepsy, this condition would almost certainly have come within the definition of disability under the Employment Equality Acts. However, the court held that the employer "could not have had direct or constructive knowledge to indicate" that the claimant "was suffering from an illness that amounted to such a disability".³⁹

[A school certificate including an explanatory note revealing the claimant's dyslexia reported as discriminatory \(2017\)](#)

Conclusion: No discrimination

Field: Education

Ms Cahill, who sat her Leaving Certificate (final school exams) in 2001, had obtained an exemption solely on the assessment of spelling and grammar elements of language subjects due to her dyslexia. However, when her Leaving Certificate was issued it carried an explanatory note stating that certain parts of the exam had not been assessed, undermining her results, and revealing her disability. Ms Cahill complained that she was given no choice in the nature of the adjustments provided and was refused the option of extra time, a reader or the provision of a quiet room, accommodations which would not have been highlighted on her Leaving Certificate had they been provided.

The Equality Tribunal upheld Ms Cahill's original complaint and directed that the Minister pay €6,000 in light of the distress caused and issue a new Leaving Certificate without the explanatory note, which revealed Ms Cahill's dyslexia and undermined her results. However, this decision was subsequently appealed through the Circuit Court and the High Court and finally to the Supreme Court. The Supreme Court found that the Circuit Court judge applied the correct legal test, the proportionality test or balancing exercise conducted by applying an objective standard, in determining whether, in providing the waiver to the Appellant coupled with the annotation, the Minister had done all that was reasonable to accommodate the needs of the Appellant per s. 4(1), while protecting the integrity of the State examination system. Further, the court held that it had been illustrated that there was evidence to support his conclusion. Therefore, the Supreme Court concluded that the Appellant had not established any error in law on the part of the Circuit Court judge in the application of s. 4(1), so that the determination of the Circuit Court judge that no discrimination had been established by reference to that provision was correct.⁴⁰

[An employee suffering from depression is dismissed because of his continuous absences \(2012\)](#)

Conclusion: Discrimination

Field: Employment

In a period of 14 months, an employee had taken sick leave frequently, citing stomach difficulties as the reason for his absence. At a meeting to discuss his employment in light of his sick leave record, he disclosed to his employer that he was suffering from depression. He was still dismissed because of his frequent absences. The employer was held not to have been on notice of the individual's disability as it had not been disclosed and therefore the duty had not been triggered until the beforementioned meeting. Nevertheless, the Labour Court noted that despite learning that the complainant had depression, the complainant was dismissed a couple of days later as it was decided by the respondent that it could not accommodate the complainant's perceived continued absence. Since there was no evidence that the respondent sought to

³⁹ Ireland, Labour Court, 24 January 2018, [Swan O'Sullivan Accountants & Registered Auditors v Seamus Counihan](#) [2018] EDA1810.

⁴⁰ Ireland, Irish Supreme Court, 2017, *Kim Cahill v. The Minister for Education* [2017] IESC 29. ([Laffoy J – lead judgment](#)); ([MacMenamin J](#)) and ([O'Donnell J](#))

examine whether there were any appropriate measures that could have assisted the complainant, the Labour Court decided that the complainant had been discriminated on the disability ground.⁴¹

Taxi company refused to carry customer accompanied by her guide dog (2010)

Conclusion: No discrimination

Field: Goods and services/transport

The complainant, who is visually impaired and is a guide dog owner, had asked a taxi company to send a taxi for her mother and mentioned that she was to be collected and that she would be accompanied by her guide dog. The company's operator refused to send a taxi because the company's policy did not allow to carry dogs. In this context of the provision of goods and services, the Equality Tribunal decided that when the respondent is not provided with any details of its customers' particular needs or information that would lead it to believe that the customer has particular needs, it is not the responsibility of the service provider to probe further if it is not obvious from the information already available.⁴²

Claim against a supermarket based on discriminatory exclusion from its premises (2010)

Conclusion: No discrimination

Section: Goods and services

The dispute concerned a claim by a complainant who had been diagnosed with clinical depression and clinical anxiety who claimed to have suffered discrimination based on disability during the course of an incident at the respondent's premises. The claimant submitted that the respondent supermarket should have become aware of his disabilities, anxiety and depression, given he had been a client for approximately 20 years. The claimant further stated that he had furthermore disclosed his disabilities to a member of the staff. However, given the member of staff had not discussed this with other staff members and was not present at the time of the incident which gave rise to the complaint, this fact was held not to be relevant.

The Equality Officer stated that "the complainant has established that a person who became reasonably acquainted with him, but who hadn't been told by him directly that he had a disability, nonetheless might reasonably become aware of his disability over time, through observation and/or inquiry of third parties." Conversely, the Equality Officer also noted that based on all the evidence presented regarding the present complaint, "in general, a person whose contact with the complainant was infrequent and/or only in passing would not necessarily conclude that he had a disability." Therefore, the Equality Officer concluded that the complainant had failed to establish a prima facie case of discrimination on the ground of disability.⁴³

An employee suffering from depression alleged discriminatory dismissal (2008)

Conclusion: No discrimination

Field: Employment

The claimant had been employed for under four months when he took sick leave and was dismissed one month later. The claimant was being treated for depression from six months before beginning the role and continued to receive treatment during the period of sick leave. The medical certificates submitted by the claimant to his employer did not mention depression and his wife had informed his employer that he was experiencing stomach difficulties.

The Labour Court found that there had been no breach of the duty to provide reasonable accommodation in these circumstances as the employer did not have knowledge of the worker's depression. The Court further

⁴¹ Ireland, the Equality Tribunal, 6 February 2012, [An Employee v A Logistics Company DEC-E2012-11](#).

⁴² Ireland, the Equality Tribunal, 5 February 2010, [Carroll v Middleton Cabs DEC-S2010-010](#).

⁴³ Ireland, the Equality Tribunal, 2 March 2010, [A Complainant v A Supermarket DEC-S2010-013](#).

reiterated that section 16(3) of the Employment Equality Acts is to be interpreted as meaning that the employer must know the need for accommodation, not just of the disability, to trigger their duty to provide reasonable accommodation.⁴⁴

Provision of reasonable accommodation led to resignation (2005)

Conclusion: No discrimination

Field: Employment

An employee with multiple sclerosis, which prevented him from driving the standard vehicle used in his workplace without adaptations, had driving duties removed from him by his employer, by way of accommodation. The employee stated that being unable to carry out driving duties caused him anxiety and stress and led to his being on sick leave and to his eventual resignation. The Labour Court rejected the employee's claim, finding that the employer had no "actual or constructive knowledge that the arrangements in place whereby he was not required to drive were a source of difficulty or distress for the complainant".⁴⁵

Lithuania

Possible discrimination on the ground of disability when submitting allocations for funding of research projects (2020)

Conclusion: No discrimination

Field: Employment

A researcher with a disability claimed that his application for funding for a research project had received a lower score because he stated in his application that he would need more time to complete the project due to his annual rehabilitation procedures to improve his health. The Ombudsperson in his decision stated that failure to complete the project at a later date would not ensure compliance with the obligation of reasonable accommodation. However, during the investigation, it was established that the legal acts of the Lithuanian Science Council, which funded the project, provided for the possibility to postpone the project implementation deadline at the request of the project implementers, and it was not established that the information provided by the applicant had an impact on the application.⁴⁶

An employer rejected a hearing-impaired applicant without assessing the individual's ability to perform the job functions (2020)

Conclusion: Discrimination

Field: Employment

A hearing-impaired candidate applied for a position in a Bank, which was a position that mainly required using a computer. The bank refused to accept the applicant, arguing that the jobs also entailed phone calls from customers, communication with colleagues and online customers through audio-visual conferencing. They furthermore defended that they could not arrange a job interview because they allegedly could only make audio calls (no video).

The Ombudsperson noted that after the Applicant informed the Bank about the hearing impairment, she was not given the opportunity to participate in further selection (recruitment) stages, therefore she was not allowed to explain the nature of her disability and explain ways the Applicant could perform the duties assigned to the relevant position. The Ombudsperson stated that it is the individualized assessment of a

⁴⁴ Ireland, the Labour Court, 23 December 2008, [Connacht Gold Co-operative Society v A Worker \[2008\] EDA0822](#).

⁴⁵ Ireland, the Labour Court, 2005, *A Worker v An Employer* [2005] 16 ELR 159. 169.

⁴⁶ Lithuania, Office of the Equal Opportunities Ombudsperson, 2020, [\(20\)SN-23\)SP-42](#).

person's ability to perform a specific job that is an essential criterion in deciding whether an employer will be able to perform the job functions assigned to him or her. Given the above-mentioned circumstances, the Ombudsperson considered that the Bank had not provided evidence that the Applicant and her possibilities to perform the functions assigned to the relevant position had been individually assessed. Thus, the Bank did not prove that appropriate measures had been taken to ensure that the Applicant could have equal opportunities to participate in a job interview, regardless of the disability.⁴⁷

The Netherlands

[A visitor with disabilities complains about the lack of accessibility to a casino's toilets \(2020\)](#)

Conclusion: No discrimination

Field: Goods and services

A visitor to a casino complained about the fact that it took a long time for the employees to open the door to the toilet for persons with disabilities. It was locked by default to prevent other guests from using this toilet as it was situated on the ground floor, whereas the other toilets were one floor up.

The Netherlands Institute for Human Rights did not directly address the distinction between reasonable accommodation and accessibility. However, it noted that the claimant had never requested for the door to be permanently unlocked against the background of settled case law that minor infractions, such as a delay in complying with the request, will not in themselves be sufficient to amount to a breach. This request was only made at a later stage, which the casino had complied with. As such, there was no breach of the reasonable accommodation provisions. Obiter dictum the Institute did point to the responsibilities of the owner of the casino to ensure accessibility also in its other casinos.⁴⁸

[A library denies access to an electric scooter user \(2019\)](#)

Conclusion: Discrimination

Field: Other

The claimant wanted to use her electric scooter in the library. The library refused, fearing damage to its property and suggested the use of a wheelchair, possibly with a library employee to help her, provided free of charge. This was however not a suitable alternative, as the claimant would be in significant pain to make the transition from her scooter to the wheelchair and would be hindered in moving it forward by herself. The use of a library employee would violate her right to autonomy. As such, allowing access to the electric scooter was deemed to be the only suitable accommodation.⁴⁹

[School refused to allow extensive homeschooling for children with disabilities \(2019\)](#)

Conclusion: Discrimination

Field: Education

The claimant wanted to home-school her children in the winter months as they (allegedly) developed certain conditions if the temperature dropped below 25 degree Celsius. The school did not want to comply with this, as Dutch legislation does not allow for such extensive home-schooling. Rather, it suggested heated taxi transport, specific measures for the children and adjustments to class heating. The claimant refused to consider these alternatives or to explain why these were not satisfactory. The Institute ruled that the woman had not adequately shown the necessity of her specific request.⁵⁰

⁴⁷ Lithuania, Office of the Equal Opportunities Ombudsperson, 2020, [\(20\)SN-44\)SP-48](#).

⁴⁸ The Netherlands, the Netherlands Institute for Human Rights, 30 July 2020, [2020-66](#).

⁴⁹ The Netherlands, the Netherlands Institute for Human Rights, 4 July 2019, [2019-64](#).

⁵⁰ The Netherlands, the Netherlands Institute for Human Rights, 16 August [2019, 2019-83](#).

A school failed to provide software for pupils with dyslexia (2016)

Conclusion: Discrimination

Field: Education

This case concerns a pupil with dyslexia whose father complained against the school for failing to make sufficient effective adjustments for the student. Among other claims, the father sustained that the school should have provided software for pupils with dyslexia. In its decision, the NIHR considered that although providing software for pupils with dyslexia is a reasonable accommodation, the actual provision cannot be required of all schools, where they can show that this would generate an undue burden as a result of their budgetary restrictions.⁵¹

Claim against a school for the lack of adjustments for a student with diabetes (2016)

Conclusion: No discrimination

Field: Education

The mother of a student with diabetes claimed against the school for failing to make any adjustments for her daughter, such as extra supervision, an extension of the test time or the possibility to take tests at a later time if her glucose levels were not right. The NIHR first noted that while the general rule is that a student or the parents must request an effective adjustment in time, in certain cases in which it is clear to a school that effective adjustments are necessary, the school itself must also take the initiative. However, in this case, the NIHR concluded that the parents did not ask for such adjustments and that in this case the needs of the pupil were not so clear as to leave no scope for reasonable doubt as to which adjustments were needed from the school. As such, the NIHR concluded there was no discrimination.⁵²

Discriminatory rejection of a job applicant with non-verbal learning disorder on the basis of the capacity test score (2014)

Conclusion: Discrimination

Field: Employment

A job applicant with non-verbal learning disorder was rejected based on the capacity test score for a trainee program for policy officer at the municipality of Rotterdam. After the claimant had taken the capacity test, she sent to the selection agency an email informing it that she has a non-verbal learning disorder. Subsequently, the selection agency informed the claimant that she had scored too low on the capacity test and that she had therefore been rejected. The claimant argued that such rejection was discriminatory since the respondent had not taken into account her disability when assessing the test results. The NIHR held the municipality of Rotterdam responsible for not taking into account the disability of the woman, although she had reported it. The NIHR further noted that the selection agency did not provide clear information as to the means by which persons with a disability which could affect the test results could communicate their needs, and recommended that the selection agency take steps to remedy this..⁵³

⁵¹The Netherlands, the Netherlands Institute for Human Rights, 19 December 2016, [2016-145](#).

⁵²The Netherlands, the Netherlands Institute for Human Rights, 27 June 2016, [2016-59](#).

⁵³The Netherlands, the Netherlands Institute for Human Rights, 2 January 2014, [2014-1](#).

Norway

[An employer refused to provide home office for an employee with a disability \(2020\)](#)

Conclusion: Discrimination

Field: Employment

A hospital employee with a disability had a specialist statement stating that due to medical reasons it was strongly recommended that she work from home twice a week. However, the employer decided it was no longer possible to provide a home office. The Norwegian Anti-Discrimination Tribunal found that such a measure would have a positive effect on the claimant, and it would entail a low cost for the employer. Consequently, the Tribunal concluded that the hospital had not offered the claimant reasonable accommodation and had therefore discriminated her.⁵⁴

[A worker with ADHD's dismissal for work and constructive knowledge \(2013\)](#)

Conclusion: No discrimination

Field: Employment

A person in vocational training who had an ADHD diagnosis was dismissed due to undocumented absence from work, episodes of threats and uncontrolled anger towards colleagues, getting involved in and starting fights with colleagues and being tired at work. The Tribunal commented that even though the duty to provide individual reasonable accommodation does not depend on a specific diagnosis, the person had waited a long time before informing his employer about it and he had not taken his prescriptions even though these medicines had had good effect on him before. The employer knew about his problems before entering into the contract and had tried to accommodate through different measures, but these had little effect. The Tribunal underlined that the person in question also has a duty to cooperate in order to design measures with good effect, and the Tribunal concluded that he had not cooperated sufficiently. He had inter alia declined follow-up assistance from a municipal health service team specialising in pedagogical and psychological assistance, in addition to not taking his medicines.⁵⁵

[The right to a personal assistant and the limit to provide such an accommodation \(2020\)](#)

Conclusion: No discrimination

Field: Social services

The case concerned questions of discrimination due to disability. The complainant claimed to have been discriminated against, because the municipality decided to terminate an agreement regarding a personal assistant. The agreement was never implemented, and the parties disagreed on the reasons for this. Whereas the municipality claimed that they terminated the agreement because the complainant neither had been available or had cooperated with the authorities while the complainant claimed that the municipality created distractions, fabricated stories saying she did not want any help, and accused her of standing in the way of getting help.

The Equality and Anti-Discrimination tribunal concluded that the municipality did not act in violation of the Equality and Anti-Discrimination act paragraph 20 (2). It was not disputed that the complainant had a reduced functional ability in the form of dyslexia, structuring and concentration problems, post-traumatic stress disorder and anxiety, nor that she was in need of individual accommodation because of her disability.

⁵⁴ Norway, Equality and Anti-Discrimination Tribunal of Norway 13 August 2020, [Case 19/203 A vs. B/University Hospital](#).

⁵⁵ Norway, Equality and Anti-Discrimination Tribunal of Norway, 9 September 2013, [Case 11/2013, A vs. B Company](#).

The Tribunal also found that the complainant had referred to circumstances which gave reason to believe that she had not received the accommodation which she was entitled to. However, after the tribunal's review of the submitted documentation, they found that the municipality had made it probable that they had facilitated - to the extent that could be required - so that the personal assistance could be put in place.

The Tribunal found that the municipality had tried to make contact with and to have an appropriate dialogue with the complainant. Their attempt to implement the current service did not succeed, because the complainant was largely unavailable, and did not cooperate on this in «a rational and appropriate manner». Those times contact was made, the tribunal's assessment was that the complainant did not appear to be participating in a necessary way.

Although the complainant's challenges apply to problems with dealing with public bodies, the tribunal's view was that the municipality's duty to provide a suitable individual accommodation, does not go further than trying as best they can to establish an appropriate/necessary cooperation with the person who shall receive the individual accommodation. The tribunal writes that the complainant was an adult and mature person, and they find it difficult to see that the municipality could do anything other than to regularly try to cooperate with her, in order to put in place the personal assistance. The Tribunal emphasises that the complainant has a duty to participate in finding appropriate solutions for the accommodation, which she did not do.

The conclusion was therefore that the municipality did not discriminate against the complainant in breach of the Equality and Anti-Discrimination Act § 20 (2) when they terminated the agreement on a personal assistant.⁵⁶

[An employer failed to take reasonable adjustments for an employee with attention deficit/hyperactivity disorder \(2007\)](#)

Conclusion: Discrimination

Field: Employment

An employer was found to have discriminated against an employee with attention deficit/hyperactivity disorder (ADHD) because, although they were aware of the diagnosis, did not make any attempts for adjustments. The Tribunal stated that it is the duty of the employer, when realizing that the employee has a disability that might affect work performance or ability to exercise his or her tasks, to seek information about the diagnosis and contact relevant expertise and suggest accommodation measures in cooperation with the employee.⁵⁷

Slovakia

[A healthcare worker with a decreased physical ability asked for a different suitable assignment \(2019\)](#)

Conclusion: No discrimination

Field: Employment

The claimant was a healthcare worker with a decreased physical ability to perform her work (over 70%). Due to the worsening of her health, she requested to her employer a work reassignment identifying the work of liaison officer as a suitable position. Due to her health restriction and the fact that she was transferred to the geriatrics department for worsened health problems, she could not perform the work as a healthcare worker. The employer, in a letter sent to the applicant, informed her that at that moment the employer had no appropriate vacancy and could not reassign her to another job suitable for her. Furthermore, they informed

⁵⁶ Norway, Equality and Anti-Discrimination Tribunal of Norway, 29 October 2020, [Case 19/65, A vs. B Municipality](#).

⁵⁷ Norway, Equality and Anti-Discrimination Tribunal of Norway, 18 October 2007, [Case 21/2007, B vs. A Company](#).

her of the possibility to terminate the employment relationship immediately. Later, the employer offered to terminate the employment relationship with an agreement. The claimant filed a lawsuit to requesting a statement that the respondent violated the principle of equal treatment and asked the court to impose an obligation for the responded to apologize to her and pay compensation for non-pecuniary damage.

The Regional Court upheld the decision of the district court and held that the claimant did not establish that the respondent treated her differently from the other employees. It also held that the employer did not have an open vacancy that would be suitable for her concerning her health condition. In addition, the Regional Court also found that it was not proved in the proceedings that the respondent refused to take measures to enable the applicant access to an employment position that would be suitable for her health condition. The Regional Court did not find a violation of Section 7(1) of the Anti-discrimination act as the claimant, in the view of the gradual deterioration of her health condition, was not qualified and able to perform her position, as it demanded lots of physical movement and fitness. The Regional Court pointed out that if the respondent were to comply with the claimant's request to transfer her to the reception, he would have to create and increase the number of employees in this position, which would naturally involve financial costs. Having regard to the circumstances of the case, together with the fact that the respondent was a state-subsidized organization, it was not possible to create a new position.⁵⁸

Slovenia

A public rehabilitation program failed to provide reasonable accommodation to persons with disabilities that require an assistant to benefit from it (2019)

Conclusion: Discrimination

Field: Goods and Services/health

A person with disabilities wished to access the service of the so-called "regenerative rehabilitation" – a program available for certain categories of persons with disabilities that is carried out in certain hotels that provide spa and other medical services. Certain categories of persons with disabilities could attend the program together with the person accompanying them, while the program covered the costs of both. The program is financed through public funds and operated by an association working in the field of disabilities. To reduce the cost for one attendee and to make the program available for more interested persons the rules were changed and the right to be accompanied by another person was no longer recognized. The applicant, a person with disabilities that used to attend regenerative rehabilitation program together with an assistant, filed a complained to the Advocate of the Principle of Equality for failure to provide reasonable accommodation in the field of health services. She claimed that attending the program without an assistant is not comparable to attending with an assistant and that many beneficiaries eligible for the program cannot afford to pay on their own for their assistant to accompany them. She claimed that by cancelling the right to payment of the costs of the assistant devoid the right to this service.

The Advocate found that the denial of payment of the costs of the assistant in the regenerative rehabilitation program amounts to a failure to provide for reasonable accommodation and constitutes discrimination of those persons with disabilities that require an assistant to fully benefit from the program.⁵⁹

⁵⁸ Slovakia, the Regional Court, 27 August 2019, [8 CO/232/2018](#)

⁵⁹ Slovenia, Advocate of the Principle of Equality, 26 April 2018, Case no. 0700-32/2017/85.

Sweden

[A deaf person was excluded from a recruitment process that mainly entailed phone-use \(2020\)](#)

Conclusion: No discrimination

Field: Employment

The claimant, who is a deaf person, applied for eight-month temporary employment as a receptionist at the Interpreter's Central (Tolkcentralen). The advertisement required the applicants to master all telephone techniques, including voice telephony. The claimant was not called for an interview nor did he get the job, as he, due to his disability, could not use a voice phone. In that post it was impossible to predict when the calls would arrive and whether they would be urgent. The court concluded that no reasonable measure for accessibility would enable the applicant to perform their tasks and consequently the applicant had not been discriminated.⁶⁰

[A court found direct discrimination due to the uncertainty created by a school regarding adequate support to a child with autism \(2019\)](#)

Conclusion: Discrimination

Field: Education

The education provider (Runstycket) runs a pre-school and a school. One of the children at the pre-school had high-functioning autism, and measures for accessibility were needed. The main matters regarding lack of accessibility were the preparations before the child's first year of school and the matter of familiarising him with the school, the competence and experience of the school's staff, and whether too many members of staff shared the duties of helping him, considering the child's needs. The Court found that the school's preparations were adequate, and that since the child had only been present for the first four days of school, there was insufficient data to find that the school's measures were insufficient. On the other hand, the Court found that the school had directly discriminated the child and his parents by creating uncertainty regarding whether or not the school would be able to accept the child and provide sufficient support.⁶¹

[A school failed to investigate accessibility measures for a pupil with disabilities in due time \(2019\)](#)

Conclusion: Discrimination

Field: Education

A pupil at a school for which Malmö Municipality is the education provider, needed support due to both her disability which made it difficult to concentrate and learn, and her dyslexia. While it was unclear exactly what measures were needed, the school had not thoroughly and promptly investigated what was needed per the Education Act. Therefore, the Scania and Blekinge Court of Appeal held the education provider responsible for discriminating the pupil in the form of inadequate accessibility.⁶²

[A school refused a request of a pupil with dyslexia to use digital reading tools during a reading test \(2019\)](#)

Conclusion: No discrimination

Field: Education

A pupil with dyslexia wanted to use her usual digital reading tools during a reading test. Her request was rejected given that the purpose of the test was to assess reading skills, and this could not be done if she was

⁶⁰ Sweden, Labour Court, 22 January 2020, [Stockholms läns landsting, AD 2020 Nr 3](#).

⁶¹ Sweden, Malmö District Court, 18 November 2018, [Runstyckets Förskola AB, Case T 11646-17](#).

⁶² Sweden, Scania and Blekinge Court of Appeal, 2019, Malmö Municipality, Case FT 3884-19.

allowed to use those tools. The Scania and Blekinge Court of Appeal confirmed this, and that the requested measure would not enable the pupil to come into a situation comparable with that of persons without her disability.⁶³

Assessment on the reasonability of the measures that had been taken to make sure an audio induction loop worked (2019)

Conclusion: No discrimination

Field: Goods and services

A company owned a conference facility that has an audio induction loop. An organisation for the hearing impaired rented the locale for a conference, but the audio induction loop was out of order, even though it had been checked the previous night. The Stockholm District Court concluded that the measures that had been taken (installing a loop, training the staff, and doing what could be demanded to make sure the loop was functional) were reasonable. The company could not have reasonably been asked to take any further measures.⁶⁴

A wheelchair user cannot board a bus and it is not offered and alternate means of transportation (2018)

Conclusion: Discrimination

Field: Goods and services/transport

A person with a wheelchair could not board a bus. The bus had been equipped with a wheelchair lift, but the driver did not know how to operate it. Subsequently, the traveller referred to the Region's guarantee that alternate means of transportation would be provided in such cases. The bus driver did not take any action to provide/ ensure such alternative means of transportation. The Gävle District Court found that the bus driver's lack of knowledge of how to operate the lift in itself was a breach of the prohibition against inadequate accessibility. Furthermore, the Court stated that the fact that the bus driver did not arrange for a taxi was a further breach of the above-mentioned provision.⁶⁵

A university rejected a deaf job applicant according to financial considerations (2017)

Conclusion: No discrimination

Field: Employment

Södertörn University wished to recruit an Associate Professor. The applicant, who is deaf, would need approximately 300 hours of educational interpretation and 150 hours of regular interpretation per year to perform the job. The university found this to be too expensive and discontinued the recruitment process. The Labour Court stated that the university under the CRPD is obliged to hire people with disabilities in the public sector and it should also set an example regarding accessibility. However, the Court concluded that the measure was too expensive to be reasonable, considering that the job in question was an ongoing (yearly) and full-time position.⁶⁶

⁶³ Sweden, Scania and Blekinge Court, 2019, Malmö Municipality, FT 3697-19. The same conclusion was reached by Svea Court of Appeal regarding Huddinge Municipality in case FT 8377-19, and by Göta Court of Appeal regarding Örebro Municipality in case FT 3960-19.

⁶⁴ Sweden, Stockholm District Court, 2019, 7 A Sevena AB, T 5181-18.

⁶⁵ Sweden, Gävle District Court, 2018, Region Gävleborg, T 240-16.

⁶⁶ Sweden, Labour Court, [Södertörn University](#), Case A 146/16, Judgement 51/17.

After the Labour Court's judgement, the matter was tried by the Committee on the Rights of Persons with Disabilities, Case No. 45/2018, [Sahlin v. Sweden](#), 23 September 2020.

A school failed to take suitable measures for a pupil who was a wheelchair user in due time (2017)

Conclusion: Discrimination

Field: Education

The Göta Court of Appeal ruled on a case concerning a 14-year-old pupil who often needed to use a wheelchair due to a chronic disease. Upon request from the claimant, the School failed to take suitable measures in due time, causing difficulties and stress to the student. According to the Court, the measures were reasonable and the failure to take them in full early on constituted discrimination in the form of inadequate accessibility.⁶⁷

A company denied accommodations to a bus driver who suffered a stroke due to practical circumstances and potential impact on other employees (2013)

Conclusion: No discrimination

Field: Employment

A bus driver could not keep working without accommodations after having a stroke. The applicant wished work part-time, with a certain schedule, and with a calm work environment. The employer refused to make such modifications arguing that it would be near impossible to create a suitable work environment. Moreover, the employer stated that doing so could cause considerable difficulties for other employees. The Labour Court deemed the measures not reasonable.⁶⁸

⁶⁷ Sweden, Göta Court of Appeal 15 May 2018, [Vara Municipality, Case T 1773-17](#).

⁶⁸ Sweden, Labour Court, 23 October 2013, [Veolia Transport Sverige AB, Case 78/13](#).