

REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES

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Abstract

The reasonable accommodation duty is an element of the principal of non-discrimination embedded *inter alia* in the United Nations Convention on the Rights of Persons with Disabilities. It is stated that reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms. In addition, by placing the reasonable accommodation duty within the definition of discrimination the Convention introduces a premise that exercising the fundamental rights needs individualized measures aimed at resolving the existing systemic discrimination against persons with disabilities.

However, there is no unified stand worldwide as for how unjustified denial of such accommodations is treated, i.e. whether it is considered as a form of direct discrimination or indirect discrimination, or *sui generis* form of discrimination. This paper explores this venue using comparative observations from the EU Member States. Furthermore, the paper elaborates on the elements of the reasonable accommodation and determines its frames in the national legal context, especially exploring the remits of the new Law on Prevention and Protection from Discrimination (2019). Finally, the paper presents ways forward in increasing the importance of this legal institute in strengthening the fundamental rights of persons with disabilities. The text uses examples from national and international jurisprudence as well as reports and analysis that have been developed on the same subject matter.

Key words: *disability, human rights, reasonable accommodation, UN CRPD*

INTRODUCTION

Right to equality is the underlying principle of human rights, which is based on the equal value and dignity of all human beings. This principle is articulated in all international and regional human rights instruments. Conceptually, equality and prohibition of discrimination may be seen both as positive and negative formulation of the same principle. Although legal

instruments are formulated to stipulate the subject of prohibition, i.e. discrimination, yet, this prohibition serves to ensure the ideal of equality, which is in fact, the purpose of this prohibition. However, the principles of equality and prohibition of discrimination not only require equal treatment in similar situations, but also different treatment in different situations. This position clearly stated in the case law of the European Court of Human Rights in the case *Thlimmenos v. Greece* (Thlimmenos v. Greece, Reports 2000-IV, [2000], para 44), is the founding base of the legal institute – reasonable accommodation (Poposka and Jovevski, 2017, pp.14-15).

This legal institute applies mainly with regard to persons with disabilities and denial of reasonable accommodation is as a form of disability-based discrimination. According to Article 2 of the UN Convention on the Rights of Persons with Disabilities (UN CRPD), reasonable accommodation shall mean “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”. Furthermore, the Committee on the Rights of Persons with Disabilities in its General comment No. 6 stresses that in order to facilitate the enjoyment by persons with disabilities on an equal basis of the rights guaranteed under legislation, States parties must take positive actions, and accessibility, reasonable accommodation and individual supports are often required. Thus, to ensure equal opportunity for all persons with disabilities, the term ‘equal benefit of the law’ as used in the Convention, means that States parties must eliminate barriers to gaining access to all of the protections of the law and the benefits of equal access to the law and justice to assert rights (General comment No. 6 (2018) on equality and non-discrimination, p.4).

As the Committee continues to elaborate in the General comment No. 6, reasonable accommodation should be seen as an intrinsic part of the immediately applicable duty of non-discrimination in the context of disability. “Examples of reasonable accommodations include making existing facilities and information accessible to the individual with a disability; modifying equipment; reorganizing activities; rescheduling work; adjusting curricula learning materials and teaching strategies; adjusting medical procedures; or enabling access to support personnel without disproportionate or undue burden.” (General comment No. 6 (2018) on equality and non-discrimination, p.6) Although the reasonable accommodation duty occurs and is equally important in all areas of society, still it is predominantly present in the area of labour relations and thus subject of interest of this paper. The purpose of every such accommodation, especially in this area, is to enable a person with disability to have effective access to employment, to participate or to be promoted at work, as well as to be enabled vocational guidance programs or additional education. The type of accommodation that is most appropriate can be decided only through individual analysis that takes into account the situation of the person with disabilities, as well as the respective employment, work or training. Thus, reasonable accommodation is always related to an individual assessment and individual solution, and does not imply identical solution for the whole group. Therefore, reasonable accommodation does not cover a whole group of persons with disabilities *per se*, but a particular person with disabilities and her/his needs.

1. SCOPE AND ELEMENTS OF REASONABLE ACCOMMODATION

A duty to provide reasonable accommodation exists in many legislations worldwide, but what is characteristic for this legal concept is that different legislations treat this issue differently. In fact, four different groups of states can be distinguished. The *first group* of states, which includes for example Ireland and France, raise the reasonable accommodation to the level of a separate form of discrimination. For instance, it is an indirect discrimination in France, and this duty is limited *ratione personae* only for those who have been officially recognized as workers with disabilities. As for the *second group* of states, such as for example the Great Britain, Sweden and Germany, it is a duty that entails consequences if failed to be fulfilled. For instance, this duty in Cyprus is not limited to the area of employment and labour relations, but it rather includes fundamental human rights, such as: the right to independent living, diagnosing and preventing disabilities, personal support with assistive technology and equipment, access to housing, facilities, streets, environment and surrounding, means of public transportation, education, access to information and communication through special devices, services providing for social and economic inclusion, professional training, employment on the open labour market and access to goods and services. However, it should be pointed out that, outside the area of employment and labour relations, this duty is not absolute. Regarding the *third group*, reasonable accommodation is a duty which does not entail explicit consequences if not fulfilled, such as for example in Finland, the Netherlands, Spain, Belgium, Lithuania, Greece, Hungary and Romania. With respect to the *fourth group*, such as for example Australia, Austria, Bulgaria, Italy, Slovenia, Poland and Turkey, reasonable accommodation is not explicitly mentioned as a duty. It can be said that the most advanced legislation in the light of this context is the one of the United States of America, which treats the reasonable accommodation as means to eliminate or overcome the barriers to realizing equal opportunities for the persons with disabilities, above all employment and job opportunities, as well as barriers to access to facilities, services and programs available to all (Poposka et al, 2014, pp.14-15).

1.1. Scope of reasonable accommodation

Ratione materiae. Reasonable accommodation duty is different from accessibility duty. Even though both aim to guarantee accessibility, the duty to provide accessibility through universal design or assistive technologies is an *ex ante* duty, whereas the duty to provide reasonable accommodation is an *ex nunc* duty. Namely, as an *ex ante* duty, accessibility must be built into systems and processes without regard to the need of a particular person with a disabilities and reasonable accommodation, as an *ex nunc* duty, must be provided from the moment that a person with a disabilities requires access to non-accessible situations or environments, or wants to exercise his or her rights and should be negotiated with the applicant. In certain circumstances, the reasonable accommodation provided becomes a collective or public good and in other cases, the reasonable accommodations provided only benefit the applicant. It should be stressed that an accommodation that is legally or materially impossible is unfeasible.

Also, reasonable accommodation duty is different from affirmative action measures. While both concepts aim at achieving *de facto* equality, reasonable accommodation is a non-discrimination duty, whereas affirmative measures imply a preferential treatment of persons

with disabilities over others to address historic and/or systematic/systemic exclusion from the benefits of exercising rights. Examples of specific measures include temporary measures for countering the low numbers of women with disabilities employed in the private sector and support programmes to increase the number of students with disabilities in tertiary education. Similarly, reasonable accommodation should not be confused with the provision of support, such as personal assistants, under the right to live independently and be included in the community, or support to exercise legal capacity (General comment No. 6 (2018) on equality and non-discrimination, p.7).

Ratione personae. Reasonable accommodation duty is always an individualized and can be invoked by a person with disabilities in a concrete case, and can apply immediately to all rights and may be limited by disproportionality. The personal scope of the reasonable accommodation duty as provided in Article 5 of the Directive 2007/78/EC, elaborated below, is restrictive and includes only the persons with disabilities who are able and qualified to perform the job concerned, as follows: job candidates, present employees, as well as former employees, when they start using the benefits on the basis of the employment. This is so because when it comes down to reasonable accommodation, the asymmetric model of anti-discriminatory legislation needs to be strictly applied, i.e. only persons with disabilities can benefit from the reasonable accommodation. Thus, persons without disabilities that has inherent relations with a person with disabilities, as stated clearly by the Court of Justice of the European Union in the *Coleman* case, are unable to invoke this duty. Namely, the Court maintained that as regards the duty to provide reasonable accommodation, contrary to direct discrimination and harassment, it could be initiated only by the person with disabilities, as explicitly indicated in Directive 2000/78/EC, thereby clearly excluding the possibility for discrimination by association on issues related to reasonable accommodation (S.Coleman v Attridge Law, Steve Law, Case C-303/06, OJ C 224, [2008]).

1.2. Elements of reasonable accommodation

The duty to provide reasonable accommodation has two constituent parts. The *first part* imposes a positive legal obligation to provide a reasonable accommodation which, according to the above stated UN CRPD is a modification or adjustment that is necessary and appropriate where it is required in a particular case to ensure that a person with a disability can enjoy or exercise her or his rights. The *second part* of this duty ensures that those required accommodations do not impose a disproportionate or undue burden on the duty bearer. Thus, as elaborated in the General comment No. 6, “‘reasonable accommodation’ is a single term, and ‘reasonable’ should not be misunderstood as an exception clause; the concept of ‘reasonableness’ should not act as a distinct qualifier or modifier to the duty. It is not a means by which the costs of accommodation or the availability of resources can be assessed — this occurs at a later stage, when the ‘disproportionate or undue burden’ assessment is undertaken. Rather, the reasonableness of an accommodation is a reference to its relevance, appropriateness and effectiveness for the person with a disability. An accommodation is reasonable, therefore, if it achieves the purpose (or purposes) for which it is being made, and is tailored to meet the requirements of the person with a disability (General comment No. 6 (2018) on equality and non-discrimination, p.7).

From another side, ‘disproportionate or undue burden’ should be understood as a single concept that sets the limit of the duty to provide reasonable accommodation. Both terms should be considered synonyms insofar as they refer to the same idea: that the request for reasonable accommodation needs to be bound by a possible excessive or unjustifiable burden on the accommodating party. The difficult question is to assess what constitute this disproportionate or undue burden. Thus, one should bear in mind that the justification of the duty for reasonable accommodation is not based on the employer’s economic productiveness, but on the equality of opportunities for persons with disabilities. Different legislations prescribe different elements which are applied to evaluate whether the costs for the accommodation were proportional or not. Poposka (2014) assess that the following elements in the area of labour are common for most legislations: nature and cost of accommodation; overall financial costs, including the benefits from the accommodation, such as for example in Bulgaria, Cyprus, Finland, France, Germany, Ireland, Malta, Spain and Great Britain; overall financial resources of the affected legal entity, such as for example in Austria, Finland, Ireland, Malta, Slovakia and Great Britain, and type of activity of the legal entity, including the structure and type of labour force. Furthermore, due attention should be given to the fact that the reasonable accommodation would bring some external benefits, such as, for instance: increased access to goods and services for the consumers with disabilities. Eventually, it needs to be taken into account that not all employers can be treated identically, as higher criteria should apply for larger legal entities compared to smaller legal entities, and the same refers to the public versus the private sector. The public sector should be the model that is followed by the private sector, but also a source of financial and other assistance to secure the reasonable accommodation for persons with disabilities. The options for financial assistance and other support to secure reasonable accommodation are stated as criterion, for example in Austria, Cyprus, Finland, France, Germany, Ireland, Malta, Netherlands, Portugal, Spain, Slovakia and United Kingdom. However, an interesting fact is that different legislations prescribe different levels of reasonable accommodation, as well as different extent of assistance and support provided by the state (Poposka et al., 2014, pp.22-23).

On the same issue, the Committee states that “potential factors to be considered include financial costs, resources available (including public subsidies), the size of the accommodating party (in its entirety), the effect of the modification on the institution or the enterprise, third-party benefits, negative impacts on other persons and reasonable health and safety requirements. Regarding the State party as a whole and the private sector entities, overall assets rather than just the resources of a unit or department within an organizational structure must be considered.” (General comment No. 6 (2018) on equality and non-discrimination, p.8).

For example, in the judgment of the French court in the *Boutheiller* case (Rouen Administrative Court, *Boutheiller v. Ministère de l’éducation*, Judgment No.0500526-3, [2008]), the Court found violation of the obligation for reasonable accommodation for persons with disabilities on the part of the Ministry of Education. The applicant, a person in wheel chair, took legal action against the Ministry of Education for not having assigned him to certain position for the reason that the respective job was situated in an inaccessible building. The applicant was offered a job in the other department that was accessible for persons in wheel chairs. The state justified its decision on the account that it is not in the public interest to invest funds in renovation of premises in order to meet the obligation for reasonable accommodation for persons with disabilities. The Court held that such obligation cannot be reduced merely on

the basis of certain attitude of the management, such as ‘interest of public service’, and established violation of the obligation.

2. THE DUTY TO PROVIDE REASONABLE ACCOMMODATION IN INTERNATIONAL LAW

2.1. UN Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities and its Optional Protocol were adopted with a consensus by the United Nations General Assembly on 13 December 2006; they were open for signature on 30 March 2007 and entered into force on 3 May 2008. The Republic of North Macedonia signed the UN CRPD on 30 March 2007 and ratified it on 5 December 2011. In addition, the country signed its Optional Protocol on 29 July 2009 and ratified it on 5 December 2011.

Article 5 from the UN CRPD, which is intentionally placed in the first part of the Convention with the articles of general (horizontal) application, elaborated the right to equality and non-discrimination of the persons with disabilities. Pursuant to Article 5, paragraph 3 of the Convention, and in order to promote equality and eliminate discrimination, States Parties commit to take all appropriate steps to ensure that reasonable accommodation is provided. Also, the UN CRPD provides that denial of reasonable accommodation constitutes discrimination. Placing the reasonable accommodation within the definition on discrimination introduces a premise that exercising the fundamental civil and political rights needs individualized measures aimed at resolving the existing systemic discrimination against persons with disabilities. The author believe this will be a serious challenge for all countries, including the developed ones, especially the inclusion of the duty to provide reasonable accommodation beyond the context of employment in the national legislations. A positive example thereof is the General Non-Discrimination Federal Act in Belgium, which envisages that rejection to provide reasonable accommodation will count as a form of discrimination. The same legal logic was followed in drafting the new Law on Prevention and Protection against Discrimination of the Republic of North Macedonia (2019), analysed below.

As mentioned above, Article 2 defines that “reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”. The case law of the Committee clearly supports this position. Namely, in the case *H.M v. Sweden*, concerning an applicant that requires a building permission for an extension of approximately 63 square meters to the house on her privately owned piece of land to build a pool that will serve for hydrotherapy, the denial constituted discrimination. The Committee finds that as a result of the decisions adopted by the municipal bodies and the High Administrative Court, and pursuant to Article 5 of the UN CRPD, H.M. is discriminated because they failed to take into consideration her right to equal opportunities for rehabilitation and improving her health on equal basis with others. The Committee noted that the “Planning and Building Act leaves space for exceptions in the urban planning, and that thus it can accommodate, when necessary in a particular case, an application for reasonable accommodation aimed at ensuring to persons with disabilities the enjoyment or exercise of all human rights on an equal basis with others and without any discrimination” (*H.M v. Sweden*, Communication No.3/2011,

CRPD/C/7/D/3/2011, [2012], para 8.5). Also, to that end the Committee in its jurisprudence, in the case *Gemma Beasley v. Australia*, similarly as in the case *Michael Lockrey v. Australia*, considers that the State party has not taken the necessary steps to ensure reasonable accommodation for the author and concludes that the refusal to provide Auslan interpretation or steno-captioning, without thoroughly assessing whether that would constitute a disproportionate or undue burden, amounts to disability-based discrimination, in violation of the author's rights under Article 5 of the Convention (*Gemma Beasley v. Australia*, Communication No. 11/2013, CRPD/C/15/D/11/2013, [2016], para 8.5; *Michael Lockrey v. Australia*, Communication No. 13/2013, CRPD/C/15/D/13/2013, [2016], para 8.5). In addition, in the case *F v. Austria*, the Committee is on a position that the non-installation of the audio system by the State party when extending the tram network resulted into a denial of the access to information and communication technologies and to facilities and services open to the public on an equal basis with others for persons with sensory impairment, and therefore amounts to a violation of Articles 5 and 9 of the Convention (*F v. Austria*, Communication No. 21/2014, CRPD/C/14/D/21/2014, [2015], para 8.7) (Poposka, 2018, pp.34-35). Also, the Convention demarks this legal institute from the right to accessibility (Article 9) and from undertaking specific measures (Article 5 paragraph 4). In addition to these articles, the duty to provide reasonable accommodation can be found in several other articles of the UN CRPD, in particular, explicitly in Article 24 (Education) and Article 27 (Work and Employment) and implicitly in Article 20 (Personal Mobility) and Article 21 (Freedom of Expression and Opinion and Access to Information).

2.2. EU Directive 2000/78/EC on establishing a general framework for equal treatment in employment and occupation

At regional level, in addition to the Council of Europe, standards set by the European Union Acquis are of exceptional importance. As regards disability-based discrimination in general, and discrimination in the area of employment and labour relations in particular, it is inevitable to mention the Directive 2000/78/EC of 27th November 2000 establishing a general framework for equal treatment in employment and occupation (Directive 2000/78/EC).

Article 5 of the Directive obliges the employer to provide reasonable accommodation to persons with disabilities stating that "in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that the employer shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned." This concept, when introduced in 2000, was quite new within the EU, although there were Member States that recognized this concept in their national legislations even prior to the adoption of the Directive (for instance, Ireland, the Great Britain and Sweden), as well as non-EU Member States which had also included this concept in their legislations (for instance, the USA, Australia).

Furthermore, Recitals 20 and 21 in the preamble of the Directive provide some guidelines on explaining the concepts of ‘reasonable accommodation’ and ‘disproportionate burden’. In particular “appropriate measures should be provided, i.e. effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources” (Recital 20). Further on, “to determine whether the measures in question give rise to a disproportionate burden, account should be taken in particular of the financial and other costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance” (Recital 21). Hence, according to the provision, the employer should provide reasonable accommodation to the persons with disabilities by undertaking measures to ensure their access to the workplace, their participation and the possibility to advance in their employment. As far as ‘disproportionate burden’ is concerned, it should be pointed out that the economic effectiveness of the employer does not justify the duty to provide reasonable accommodation, but, on the contrary, the equality of opportunities of the persons with disabilities does.

As for the personal scope of the provision in Article 5, it is governed with Article 3, i.e. the protection covers job candidates, present employees, as well as former employees, when they start using the benefits on the basis of the employment, such as, for example, the right to pension. This is so because when it comes down to reasonable accommodation, the asymmetric model of anti-discriminatory legislation needs to be strictly applied, i.e. only persons with disabilities can benefit from the reasonable accommodation. Therefore, disability should not be ignored, but, on the contrary, it should be rather taken into account. This asymmetric model or model of ‘difference’ holds that the individuals having certain protected trait are different from the individuals that do not have this trait and, by treating them in an identical manner, it could lead to discrimination. Unlike the model of ‘difference’, the model of ‘sameness’ holds that discrimination occurs when individuals who are fundamentally the same are treated differently for illegitimate reason (Waddington, 2004).

Further on, determining the personal scope of this article also depends on the nature of the reasonable accommodation as a concept, i.e. its goal. In fact, as an element of anti-discrimination, reasonable accommodation is aimed at eliminating the obstacles hindering the persons with disabilities to compete on the open labour market. Therefore, this article refers only to the persons with disabilities who are capable and qualified to carry out the job concerned, but need a slight stimulus or accommodation so as to carry it out. This is also reflected in the Preamble to the Directive, i.e. Recital 17, stating the following: “does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training ...”.

What has been determined as a drawback in this provision is that it does not explicitly envisage that unjustified denial to provide reasonable accommodation counts as discrimination, contrary to Article 5 of the UN CRPD, as elaborated above. In fact, Article 5 of Directive 2000/78/EC does not clearly envisage that denial of reasonable accommodation counts as discrimination due to the fact that the Member States do not have common viewpoint on how the denial of such accommodation should be treated. Whether as a form of direct discrimination (e.g. Ireland, Sweden, Finland, Malta, Luxembourg) or indirect discrimination (e.g. France, Spain, Austria, the Netherlands) or as *sui generis* form of discrimination (e.g. the Great Britain) or as duty the violation of which envisages no particular sanction (e.g. Bulgaria).

Anyhow, it should be pointed out that Recital 16 in the Preamble of the Directive states that “provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability”. Article 16 (b), in addition, also states that: “any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers’ and employers’ organisations are, or may be, declared null and void.” (Puposka et al., 2014, pp.28-32).

3. THE DUTY TO PROVIDE REASONABLE ACCOMMODATION IN NATIONAL LAW

Provisions on reasonable accommodation for the persons with disabilities are envisaged in the Law on Prevention and Protection against Discrimination (Article 4, paragraph 1, point 4 and Article 6) and the Law on Labour Relations, as well as the Law on Employment of Persons with Disabilities (Article 7, paragraph 2), elaborated on in details below.

3.1. Law on Prevention and Protection against Discrimination

The new Law on Prevention and Protection against Discrimination (2019) prohibits all forms of discrimination, including direct and indirect discrimination (Article 8), harassment (Article 10), calling, incitement and instruction to discrimination (Article 9), victimization (Article 11) and segregation (Article 12) performed by natural persons and legal entities in both the public and the private sector, in the area of employment and labor relations, education, access to goods and services, housing, health, social protection, administration, judiciary, science, sports, participating and acting in syndicates, political parties and associations of citizens and other areas respectively (Article 3). Further on, the Article 13 of the Law envisages multiple discrimination, intersectional discrimination, repeated discrimination and continued discrimination as severe forms of discrimination.

With respect to persons with disabilities, Article 4, paragraph 1, point 4 and Article 6, are especially important, envisaging provision of reasonable accommodation. In fact, the Law provides that “reasonable accommodation shall mean the necessary and appropriate modification and adjustment required in a particular case, which does not result in a disproportionate or undue burden, aimed at ensuring the exercise or enjoyment of all human rights and freedoms of persons with disabilities on an equal basis with others. Denial of reasonable accommodation shall constitute discrimination”. Furthermore, Article 6 when defining what is discrimination, clearly states that discrimination covers all forms including denial of reasonable accommodation and denial of accessibility and availability of infrastructure, goods and services.

As regards the issue of disproportionate burden, the national legislation does not analyze and condition that issue, with the size and the status of the legal entity (public or private), with the financial and other costs entailed, the scale and financial resources of the employer, as well as the possibility of obtaining public funding or any other assistance.

The analysis of the national legislation can lead to the conclusion that the issue of reasonable accommodation inevitably falls within the anti-discriminatory legislation and unjustified denial of reasonable accommodation counts as a form of discrimination. This is a quite progressive provision and it is fully in line with the UN CRPD. Still, this provision can be

further enhanced by including clarifications according to Recitals 20 and 21 of Directive 2000/78/EC, elaborated on above.

3.2. Law on Labour Relations

A fundamental law in the area of labour relations of persons with disabilities is the Law on Labour Relations, which is *lex generalis* in the particular area, supplemented with the Law on Employment of Disabled Persons, as *lex specialis*, elaborated below.

The Law on Labour Relations governs the labour relations between the employees and the employers, established by concluding employment contract (Article 1). It should be pointed out that the Law makes no difference between the employees in the public and the private sector (Article 3, paragraph 1), as well as between part-time and full-time employees (Article 8, paragraph 3). In addition to the general provisions, the Law also envisages special protection, *inter alia*, for the persons with disabilities. In fact, Article 122 envisages that the employee working on part-time basis due to disability exercises the rights under the mandatory social insurance as he/she would if working on full-time basis. Furthermore, measures for special protection of persons with disabilities are envisaged pursuant to Part XII Special Protection (Articles 162, 164 and 169) of the Law, aimed at protecting the health of these persons. In fact, persons with disabilities are considered as specific and risk group and the employer should take this into account prior to assigning the working tasks and when making essential changes of the working conditions. In addition, should a certain risk be determined, which cannot be eliminated otherwise, the employer is obliged to make changes to the working conditions or the working hours or to offer adequate alternative work to the employee with special risk.

Further on, Articles 177-178 envisage that “the employer shall ensure conditions for professional rehabilitation and shall re-assign to other full-time position the occupationally disabled worker who has the right to professional rehabilitation on the basis of professional inability to work” (Article 178, paragraph 1), being supplemented with a new paragraph which reads “the employer shall re-assign the employee faced with immediate danger of occurrence of disability to other adequate position and to ensure salary compensation in the amount of the difference between the salary the employee received before being re-assigned and the salary to receive at the new working position” (Article 178, paragraph 2). However, this should not mean that the employer should employ persons who do not meet the inherent requirements for the job concerned. Article 103 envisages that the employment contract is terminated if the employee has lost the necessary ability to work.

In addition to the special protection of employees – persons with disabilities, the Law on Labour Relations offers protection of employees – parents of children with disabilities. For instance, pursuant to the Law, one of the parents of a child with disabilities and special educational needs has the right to work half of the full-time working hours, and this part-time working hours will be counted as full-time (Article 169). Furthermore, pursuant to Article 137, paragraph 3 of the Law on Labour Relations, *inter alia*, a person with disabilities, an employee with at least 60% body impairment and an employee caring and looking after a child with disabilities has the right to additional three working days annual leave.

3.3. Law on Employment of Persons with Disabilities

The Law on Employment of Persons with Disabilities, pursuant to Article 5, paragraph 2, envisages reasonable accommodation, also stating that “when employing a disabled person, the employer is obliged to create appropriate working conditions and to adapt the workplace depending on the job position, the type and the level of education and the type and the level of disability of the person being employed”. The legislator does not explain this norm in more details, thereby not indicating the conditions that are to be created by the employer. For example, whether they would include adjustment of the job interview process, adjustment of the working hours and practices, to providing professional vocational trainer and similar. By not precisely stating the provision, the legislator has left room, through the case law, to set the limits of this legal concept.

Further on, the legislator also does not clarify in more details what kind of adaptation of the workplace is to be made; however, it is precisely regulated in the Rulebook on the Criteria and the Manner of Awarding Non-Refundable Funds from the Special Fund for Improvement of the Employment and Working Conditions for Persons with Disabilities. In fact, Article 7, paragraph 2 of this Rulebook states that the adaptation includes accommodation of the working and the auxiliary premises and equipment, the working means, devices and other technical work equipment. A positive thing is that, in addition to the duty to provide reasonable accommodation, it also envisages financial resources provided by the Special Fund for Improvement of the Employment and Working Conditions for Persons with Disabilities. What the legislator clearly envisages is the limited possibility to use this legal concept, i.e. limiting the personal scope of the protection. In fact, for a person to be able to request reasonable accommodation, he/she should be recognized as person with disabilities pursuant to the law.

4. CONCLUSIONS

Principles of equality and prohibition of discrimination not only require equal treatment in similar situations, but also different treatment in different situations. This position is the founding base of the legal concept of reasonable accommodation. Denial of reasonable accommodation is as a form of disability-based discrimination and as such is intrinsic part of the immediately applicable duty of non-discrimination in the context of disability. Although the reasonable accommodation duty occurs and is equally important in all areas of society, still it is predominantly present in the area of labour relations and thus subject of interest of this paper.

Reasonable accommodation duty is always an individualized and can be invoked by a person with disabilities in a concrete case, and can apply immediately to all rights and may be limited by disproportionality. The paper concludes that this duty has two constituent parts. The first part imposes a positive legal obligation to provide a reasonable accommodation which, according to the above stated UN Convention on the Rights of Persons with Disabilities is a modification or adjustment that is necessary and appropriate where it is required in a particular case to ensure that a person with disabilities can enjoy or exercise her or his rights. The second part of this duty ensures that those required accommodations do not impose a disproportionate or undue burden on the duty bearer. When assessing the ‘disproportionate burden’, one should take into account that the economic effectiveness of the employer does not justify the duty to

provide reasonable accommodation, but, on the contrary, it is the equality of opportunities of the persons with disabilities.

Furthermore, the UN CRPD makes an important step forward by determining that unjustified denial to provide reasonable accommodation counts as discrimination, and by placing such view in an article with horizontal application, which means that it should be applied throughout the Convention. In addition, placing the reasonable accommodation within the definition on discrimination introduces a premise that exercising the fundamental civil and political rights needs individualized measures aimed at resolving the existing systemic discrimination against persons with disabilities.

The paper concludes that the concept of reasonable accommodation is quite a new concept in the national legal system. Thus, it is necessary to further explain the norms envisaging it, both in the area of labour relations and in the legislation governing the protection against discrimination in general. The definition for reasonable accommodation should be accompanied with an illustrative list of reasonable types of accommodation, such as for instance in the area of labour: reduction of working hours, reduction of the scope and the type of working tasks, redeployment procedures, access to parking spaces, appropriate job interviews or qualifying exams, and similar. In addition, is it desirable for a case law to be created when applying these provisions, so as to show, in practice, where to set the limits of this legal concept.

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