



# Potential of Reasonable Accommodation in the Workplace

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# Initial Thesis /Overview of Presentation

- The concept of reasonable accommodation has a potential to be developed beyond the area of disability discrimination
- Reasonable accommodation for pregnant workers and working parents
- Reasonable accommodation for employees with other dependent family members
- Reasonable accommodation for elderly employees
- Reasonable accommodation for religious employees

# International law vs EU law vs national law

- Differences in approaches to r.a.
- ILO Convention concerning equal opportunities and equal treatment for men and women workers: workers with family responsibilities, 1981; UN Convention on the Rights of Persons with Disabilities of 2006
- EU: R.a. for disabled employees and certain adjustments to pregnant workers and working parents; Proposal for adjustment to employees with other dependent family members
- Considerable differences in national legislations (Canada, USA, UK as opposed to Croatia)

# Reasonable Accommodation for Employees with Disabilities

- Well developed, especially since 2009 when the EU became party to the UN Convention on the Rights of Persons with Disabilities (*HK Denmark, 2013*)
- Legislative basis
- National legislation goes beyond (example: UK case-law - *Chief Constable of South Yorkshire v Jelic, 2010*)
- Croatia: Anti-discrimination Act, Labour Act, Act on Professional Rehabilitation and Employment of Persons with Disabilities

# Working Parents and Reasonable Accommodation

- Pregnant Workers Directive of 1992 (gaps)
- Parental Leave Directive of 2010 – a right to request changes to working arrangements (the employer may refuse)- soft law mechanism
- Proposal Directive on Work-Life Balance of 2017 (Idealism?)

# Reasonable Accommodation and Employees with other dependent family members

- So far no adjustments guaranteed by the EU law
- Proposal Directive on Work-Life Balance of 2017 (carer's leave)
- *Maschellani case* (2014) – failure of the CJEU to guarantee autonomy of employees over their working time – negative impact on their work-life balance of employees with family responsibilities

# Reasonable Accommodation for Elderly

- Neither international nor EU sources of law regulating right of elderly employees to r.a.
- M. Sargeant (2008): close relationship between age and disability (*'likelihood of having a disability increases with age'*) – the duty of r.a. should be extended to include older employees
- Moving the elderly employees to another job to accommodate them
- Shortening working hours

# Religion and Belief- accommodating Workplace

- ▶ 'Adjustments of work rules or practices that take away the conflict between work obligations and religious obligations of the employee' (Alidadi, 2016)
- ▶ 'The lack of a clear legal basis for religious accommodation in Europe' / 'no explicit duty to r.a.' in the EU (Alidadi, 2016) – Amendment to the Framework Directive?
- ▶ *Achbita, Bougnaoui* cases of the CJEU ruled in 2017 (limitations of policy of neutrality to front-office workers; wishes of a customer are not GOR)



# Conclusion

- Limits of the EU non-discrimination law (exhaustive list of prohibited grounds, different areas of social life in which it is prohibited to discriminate against) - room for legislative development at the EU and national level
- Readiness for broadening the concept to other vulnerable groups of employees?
- The concept of reasonable accommodation belongs to both: to the area of non-discrimination and to the area of employment law (Hepple; Hendrickx; Alidadi: 'integrative function of labour law')

While we are awaiting legislative changes... (How to find a right way out of the maze?)

