

Topic 1. Workers with disability, including the question of the influence of UN and ILO conventions on national legal orders

QUESTIONNAIRE

1. General legal framework

The effect of international instruments

- 1.1 Has your country ratified the UN CRPD (date and form of ratification)?
- 1.2 (a) Is your country obliged to implement the EU Employment Equality Directive (Directive 2000/78/EC; hereinafter: Directive)?
(b) When and how was it implemented (formal issues)?
(c) What have been the relevant and significant changes regarding the implementation of the Directive with regard to the discrimination of workers with disabilities?
- 1.3 What other relevant international treaties, ILO Conventions shall be applied to you country?

National legal framework

- 1.4 Please, evaluate the impact of the above mentioned international legal instruments on the development of your national legal system in relation to workers with disability in the field of labour law!
- 1.5 What are the relevant national labour law regulations in relation to workers with disability (especially the non-discrimination provisions)?
- 1.6 What role is there for collective agreements regarding the protection of workers with disability?

2. The definition of disability in national law

- 2.1 How does your national law define the personal scope of employment protection in relation to persons with disabilities?
- 2.2 If there are different definitions in various employment laws, what differences may be identified? Is there a legislative effort to find an uniform legal disability definition regarding the employment protection ?
- 2.3. Has the UN CRPD or the jurisdiction of the Court of Justice of the European Union – hereinafter: CJEU (with special regard to the cases *Chacón-Navas* [C-13/05], *Ring and Skouboe Werge* [C-335/11 and C-337/11], *Kaltoft* [C-354/13] and *Z.* [C-363/12]) had any influence on the labour law definition of disability?

2.4 How is disability required to be proven/certified in employment litigation?

3. Labour law instruments to protect persons with disability

3.1 Are there any restrictions/obstacles regarding the establishment of an employment relationship regarding a person with mental disability? Have these rules been amended as a result of implementing the UN CRPD?

3.2 Is there any special protection of persons with disability against termination of employment?

3.3 What other protection/benefits/preferential treatment is provided by your national labour law, such as special organisation of working time, extra paid leaves, mobility allowances etc.?

4. Anti-discrimination law instruments to protect persons with disability

Anti-discrimination law framework in employment matters

4.1 Are there special provisions on the prohibition of discrimination against persons with disabilities in the field of employment?

4.2 Which aspects of employment are covered by these special provisions?

Reasonable accommodation

4.3 (a) Has the reasonable accommodation of the special needs of persons with disabilities been regulated in the field of employment?

(b) What is the sanction of breaching this obligation? Is this violation considered as discrimination? Are the same provisions, sanctions applied as for discrimination cases?

4.4 Has any provision and/or practice on reasonable accommodation been introduced/amended as a result of implementing the UN CRPD or the Directive or the jurisdiction of the CJEU (with special regard to the cases *Ring* and *Z.*)?

5. Procedural law instruments to protect persons with disability

Forums and sanctions

5.1 Do NGOs and/or trade unions have a right to initiate a legal procedure on behalf of a group of persons with disabilities against alleged discrimination (*actio popularis*)? Are they eligible to this with or without the consent of the concerned persons?

5.2 (a) What remedies and forums are available in cases of alleged discrimination against persons with disabilities?

(b) Which are the most effective and/or most common sanctions?

5.3 Is there any role for mediation in such cases?

Burden of proof

5.4 (a) How is the burden of proof regulated in discrimination cases? Who has to prove the causality between the discrimination ground and the differential treatment (disadvantage)?

(b) How are the burden of proof provisions applied in court procedures?

5.5 Has the UN CRPD or the Directive had any influence on the procedural provisions (actio popularis, sanctions, burden of proof etc.)?

6. Recent developments in case law and the role of the Supreme Court

6.1 What role is there for the Supreme Court regarding the development and guidance of case law in this field?

6.2 What is the tendency observed in your country's case law – a growing or decreasing number of cases related to disability discrimination? How do you explain such trends?

6.3 What are the main topics of complaints related to discrimination based on disability: recruitment, promotion, equal pay, redundancy, other?

6.4 Has there been cases on reasonable accommodation? If yes, please describe one of these cases and the decision!

6.5 Please, describe the most important court decisions (test cases) in this field!