**Prohibition of Disability Discrimination with regard to Healthcare in the European Union**

**May 2021**

Paper written on behalf of the European Disability Forum by Lisa Waddington, EDF Professor of European Disability Law, Maastricht University NLs.

This paper examines how the 27 EU Member States address disability discrimination in the area of healthcare. Specifically, it identifies whether each Member State has legislation prohibiting disability discrimination in the field of healthcare and whether legislation provides for a duty to provide a reasonable accommodation for disabled individuals in the field of healthcare.

In the context of this paper, a prohibition of discrimination is understood to encompass a prohibition of direct discrimination and indirect discrimination. Direct discrimination involves adverse treatment which is explicitly linked to a disability, such as a refusal to provide a transplant organ to a person with an intellectual disability. Indirect discrimination involves application of a condition or practice which does not explicitly refer to disability, but which is more likely to disadvantage people with (certain kinds of) disabilities than people without disabilities. An example might be a requirement to fill in a paper based form before a medical appointment, with no alternative arrangements being made for people with disabilities who cannot do this. If a condition or practice is necessary and proportionate, it can still be allowed, even if it is likely to disadvantage some people with disabilities. Harassment and an instruction to discriminate are also forms of discrimination.

A reasonable accommodation involves an adaption or adjustment needed to meet the needs of a particular person with a disability to enable them to access healthcare on an equal basis with others. An example might be providing a sign language translator for a individual who is Deaf when meeting with a healthcare professional. The duty to provide an accommodation is subject to the requirement that it does not amount to a disproportionate burden. An unjustified failure to provide a reasonable accommodation can be classified as a form of discrimination under national law.

The UN Convention on the Rights of Persons with Disabilities (CRPD), which the EU and all 27 Member States are party to, addresses health in Article 25. Under the Convention Parties are required to ‘prevent discriminatory denial of health care or health services’ and ‘provide persons with disabilities with the same range, quality and standard of free or affordable health care as provided to other persons’. The Convention can also be interpreted as requiring the establishment of a duty to provide reasonable accommodation in the context of healthcare. EU law does not currently address disability discrimination in the field of healthcare, although the 2008 proposal for a non-discrimination directive addressing discrimination on the grounds, amongst others, of disability, does cover healthcare.[[1]](#footnote-1) That proposal remains blocked in the Council. As a result, at present responsibility to address the CRPD requirements concerning healthcare falls on the 27 Member States.

As noted above, this paper examines whether the Member States have legislation in place which prohibits disability discrimination and establishes a requirement to provide a reasonable accommodation in the field of healthcare. However, given its brevity, it does not discuss a number of related issues including: the definition of disability found in the relevant legislation and case law (this determines who is protected); the definitions of discrimination; exceptions and justifications; the scope for positive action in the field of health care; remedies and enforcement; the role of bodies which promote equal treatment with regard to people with disabilities; and other issues concerning implementation.

Two further important issues which are not examined on a structural basis in this paper are the status and relevance for domestic law of, on the one hand, constitutional provisions and, on the other, the CRPD. It is sometimes possible for individuals to invoke either constitutional provisions – e.g. which prohibit discrimination or provide for access to healthcare – or the CRPD, directly before courts, and for courts to confer enforceable rights on individuals with disabilities based on these instruments. Exploring whether and when this can happen in each of the 27 Member States falls outside the scope of this paper, but, where relevant, some examples of such approaches found in case law in specific Member States are discussed below.

The table at the end of this paper provides an overview of how disability discrimination and reasonable accommodation in the field of healthcare are addressed in legislation in the Member States. Information in this table is based on information found in the non-discrimination country reports of the European Equality Law Network (<https://www.equalitylaw.eu/country>), which are updated on an annual basis. In many cases it is possible to confirm categorically that legislation does prohibit disability discrimination / require a reasonable accommodation, or to confirm that no such legislative provisions exist. Where legislation does establish such requirements, the table provides information on the relevant legislation, including a hyperlink to the legislation wherever possible. However, in some cases legislation is not explicit in this respect, but academic commentators nevertheless believe that, in light of the legislation as a whole, such requirements exist. In these cases the table indicates that the relevant requirements exist, but judicial interpretation – meaning court cases which confirm this interpretation – is needed. Lastly, in some cases courts or equality bodies have interpreted the legislation so as to prohibit disability discrimination / require a reasonable accommodation in the field of healthcare, even though the legislation is not explicit in this respect.

EU Member States can be divided into four categories in terms of how they address disability discrimination and reasonable accommodation in the area of health care:

1. Legislation both prohibits disability discrimination and requires a reasonable accommodation in the area of health care (in some cases these interpretations must be confirmed by judicial interpretation);
2. Legislation prohibits disability discrimination, but does not require a reasonable accommodation in the area of health care (in some cases these interpretations must be confirmed by judicial interpretation);
3. Legislation does not prohibit disability discrimination, but does require a reasonable accommodation in the area of health care;
4. Legislation neither prohibits disability discrimination nor requires a reasonable accommodation in the area of health care.

The following fourteen Member States fall into category 1 (prohibit disability discrimination / require reasonable accommodation): Austria, Belgium, Bulgaria, Croatia, Czechia, Finland, Germany, Hungary, Ireland, Malta, the Netherlands, Slovakia, Spain, Sweden;

The following seven Member States fall into category 2 (prohibit disability discrimination / no requirement for reasonable accommodation): France, Italy, Latvia, Lithuania, Luxembourg, Romania, Slovenia;

The following Member State falls into category 3 (no prohibition of disability discrimination / reasonable accommodation requirement): Cyprus

The following five Member States fall into category 4 (no prohibition of disability discrimination / no reasonable accommodation requirement): Denmark, Estonia, Greece, Poland, Portugal.

Therefore just over half of the Member States prohibit disability discrimination and require reasonable accommodation in the field of healthcare. A quarter of Member States only prohibit disability discrimination, but do not impose a reasonable accommodation obligation, in the field of healthcare, while nearly a quarter do not impose any requirements in this respect. One Member State does not prohibit disability discrimination in the field of healthcare, but does impose a reasonable accommodation duty. It is not possible to identify any trends in how different groups of Member States respond – so categories 1, 2 and 4 contain both older and newer Member States and states from different parts of Europe. Further information on the exact situation in each Member State is provided in the table below.

The last part of this paper highlights a handful of court judgments which address disability discrimination or reasonable accommodation in the field of healthcare. The first three cases involve judgments where courts or equal treatment bodies found discrimination or a failure to provide a reasonable accommodation, and illustrate the significance of prohibiting disability discrimination with regard to healthcare, whilst the last case concerns a conciliation procedure that led to an agreement. Interestingly, in some of the judgments, courts referred to the CRPD explicitly and took it into account.

In Bulgaria the Supreme Administrative Court ruled in a challenge to a decision of a government minister to not provide funding for life saving treatment which was required by the complainant.[[2]](#footnote-2) The Supreme Administrative Court was the final appeal court in the case of *Minister of Healthcare v. K.I*. which was decided in 2018. Lower court judgments in this case had found that, by refusing to fund the treatment, the minister had discriminated against the complainant within the meaning of the CRPD, as well as under another international human rights treaty, the Covenant of Civil and Political Rights. The Supreme Administrative Court confirmed the lower court’s decision and ruled that the minister was under a duty to find the necessary funds, and to use available funding to the maximum, to guarantee the compliance with the CRPD. This included providing a reasonable accommodation by making the necessary medical treatment available to the complainant. The Supreme Administrative Court also found discrimination under the CRPD and the Covenant. This case reveals the potential of courts in some jurisdictions to rely on international law, including the CRPD, to combat disability discrimination in the field of health care. However, it is worth noting that this is not possible in all EU Member States.

In Germany the Federal Constitutional Court has also ruled in a case involving disability discrimination in the field of healthcare and referred to the CRPD.[[3]](#footnote-3) The complainant in this 2020 case was a patient who was accompanied by a seeing eye / guide dog. In order to access the physiotherapist’s practice where she was receiving treatment, she had to pass through the waiting room of another medical practice with her dog. The alternative means of access, involving climbing a flight of stairs, was inaccessible as the dog could not climb the stairs. The other medical practice, after initially allowing the complainant to have access via its waiting room, prohibited her from using this route on the grounds that the dog was unhygienic. It was argued that she did not need to bring the dog into the practice, and that she could leave the dog unattended and leashed up outside the practice and receive assistance from medical staff.

The Federal Constitutional Court found that the prohibition of entering the practice with a guide dog was unconstitutional. It held that the denial of access with the dog amounted to disability discrimination prohibited under Article 3.3 of the Basic Law (Constitution). Section 19 of the General Act of Equal Treatment prohibiting discrimination on the ground of disability was also applicable, and had been breached. Based on the text of that law, it was not completely clear that healthcare fell under the scope of this section – however, the Constitutional Court found that the Act had to be interpreted in light of the Constitution and that this situation was covered. As a result it found that the prohibition to cross the waiting room accompanied by a guide dog amounted to indirect discrimination and there was no objective reason for this prohibition. Expert evidence which stated that there were no hygiene risks associated with the guide dog was taken into account in this respect.

The Constitutional Court also referred to the CRPD in its judgment, and stated that, in light of the CRPD, the requirement that the complainant give up her autonomy by leaving her dog outside and receiving assistance from staff at the medical practice was disproportionate. The Court therefore also relied on the CRPD when interpreting the legal duties under German law.

A last judgment involving discrimination in the field of healthcare comes from Hungary.[[4]](#footnote-4) The Hungarian Equal Treatment Authority, which can rule in cases of discrimination, addressed an *actio popularis* claim. This is a case brought by an individual which is in the interest of a wider group of people. The case concerned a healthcare institution which refused to provide stomatology treatment to patients who were HIV-positive or who had hepatitis, and referred these patients to another hospital. It justified its decision by arguing that it would have to take extra protective measures to treat these patients and this would result in a disproportionate financial burden. This claim, which was not supported with any evidence, was not accepted by the Authority, which found that the patients had been directly discriminated against.

In some instances, complaints of disability discrimination in healthcare do not need to be resolved through legal action – instead a conciliation procedure can provide a satisfactory outcome. This was the case is Austria, where the mother of a child with Down Syndrome complained about the failure of medical staff to treat her child in the same way as other patients. The child required a blood test and went to a clinic with her mother. She was made to wait far longer than other patients for the test, including another child who did not have a disability. The mother alleged that the decision to make her child wait longer than other patients was based on her daughter’s disability. Under the Austrian Federal Disability Equality Act all complaints of disability discrimination must be subject to a conciliation procedure prior to proceeding to court.[[5]](#footnote-5) In this case the conciliation led to agreement between the parties. The behaviour of medical staff was identified as unacceptable, an apology was offered and staff received appropriate training to address this issue.[[6]](#footnote-6)

These judgments and agreements reveal the potential for disability non-discrimination law to address health care and to impact in a variety of ways.

The following table provides further information on the situation in the 27 EU Member States.

**Austria**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes (judicial confirmation needed to confirm) |
| Legislation: Section 2(2), Federal Disability Equality Act, *BGStG*  |
| Reasonable Accommodation Duty exists | Yes |
| Legislation: Section 6, Federal Disability Equality Act, *BGStG*  |
| Other Comments: If making a reasonable accommodation would result in a disproportionate burden, discrimination will still occur if the provider fails to improve the situation of a disabled individual to achieve the best approximation to equal treatment (Art 6(2)) Federal Disability Equality Act.Some provincial non-discrimination laws also prohibit disability discrimination in the area of health care.Legislation can be accessed via: [www.ris.bka.gv.at](http://www.ris.bka.gv.at)See discussion on agreement reached in a conciliation procedure above. |

**Belgium**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes |
| Legislation: see below |
| Reasonable Accommodation Duty exists | Yes |
| Legislation: Art. 4(12) Federal Act of 10 May 2007 designed to combat certain forms of discrimination, *Loi tendant à lutter contre certaines formes de discrimination.*Framework Decree for the Flemish equal opportunities and equal treatment policy of 10 July 2008, *Decreet houdende een kader voor het Vlaamse gelijkekansen en gelijkebehandelingsbeleid.* Art. 4(13), Decree of 6 November 2008 on the fight against certain forms of discrimination, including discrimination between women and men, in the field of economy, employment and vocational training, *Décret de la Région wallonne du 6 novembre 2008 relatif à la lutte contre certaines formes de discrimination, en ce compris la discrimination entre les femmes et les hommes, en matière d’économie, d’emploi et de formation professionnelle.*Decree of 19 March 2012 on fighting certain forms of discrimination, *Dekret zur Bekämpfung bestimmter Formen von Diskriminierung.*Decree of 9 July 2010 on the fight against certain forms of discrimination and on the implementation of the principle of equal treatment, *Décret relatif à la lutte contre certaines formes de discrimination et à la mise en oeuvre du principe de l’égalité de traitement.* |
| Other Comments: Healthcare is largely a competence of the communities in Belgium.Legislation can be accessed via: <http://www.ejustice.just.fgov.be/loi/loi.htm> |

**Bulgaria**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes |
| Legislation: Art. 6(1), Protection Against Discrimination Act, *Закон за защита от дискриминация.* <http://lex.bg/bg/laws/ldoc/2135472223> |
| Reasonable Accommodation Duty exists | Yes |
| Legislation: Protection Against Discrimination Act, *Закон за защита от дискриминация.* <http://lex.bg/bg/laws/ldoc/2135472223> |
| Other Comments: See discussion of case law above. |

**Croatia**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes |
| Legislation:, Arts. 8(3) and 8(4), Anti-discrimination Act, Official Gazette 85/2008 and 112/2012, *Zakon o suzbijanju diskriminacije*. <https://www.zakon.hr/z/490/Zakon-o-suzbijanju-diskriminacije> |
| Reasonable Accommodation Duty exists | Yes (judicial interpretation needed to confirm) |
| Legislation: Art. 4(2), Anti-discrimination Act, Official Gazette 85/2008 and 112/2012, *Zakon o suzbijanju diskriminacije*. <https://www.zakon.hr/z/490/Zakon-o-suzbijanju-diskriminacije> |
| Other Comments: A reasonable accommodation duty exists outside employment when needed to enable a disabled person to use publicly available resources or to participate in public and social life (Art. 4(2)). The court must interpret the scope of ‘publicly available resources’ and participation in ‘public and social life’. However, it is assumed that this covers healthcare. |

**Cyprus**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | No |
| Reasonable Accommodation Duty exists | Yes |
| Legislation: Art. 9, Law on Persons with Disabilities*, Ο Περί Ατόμων με Αναπηρίες Νόμος του 2000 (127(I)/2000).* <http://www.cylaw.org/nomoi/enop/ind/2000_1_127/section-sce0615cb8-d50c-5b6d-88ad-218c5a8db790.html> |
| Other Comments:  Cypriot law provides a right to healthcare for people with disabilities. In practice, this sometimes means that disability discrimination in this field is prohibited, although this is not always the case. The law provides that persons with disabilities are entitled to a timely diagnosis of their condition; intervention and prevention of the further consequences of their disability; medical and pharmaceutical care; rehabilitation, including the provision and training in use of prosthetics; psychological and other support for themselves and their families; personal support with assistive equipment; services to help in every day life and work, interpretation or escort, etc. Art. 4(2) of the Law on Persons with Disabilities, *Ο Περί Ατόμων με Αναπηρίες Νόμος του 2000 (127(I)/2000).*<http://www.cylaw.org/nomoi/enop/ind/2000_1_127/section-sc411bb449-1e01-2658-c836-ab4779d4c66e.html>The law provides a duty for reasonable accommodation as regards the above right to healthcare. The law does not specify what forms reasonable accommodation should take.[[7]](#footnote-7) |

**Czechia**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes (judicial interpretationneeded to confirm) |
| Legislation: Section 1(1)(f) and 1(1)(h), Act No. 198/2009 Anti-Discrimination Act. English translation: <https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/pravni_predpisy/Anti-discrimination-Act.pdf> |
| Reasonable Accommodation Duty exists | Yes (judicial interpretation needed to confirm), |
| Legislation: Section 3(2), Act No. 198/2009 Anti-Discrimination Act, English translation:<https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/pravni_predpisy/Anti-discrimination-Act.pdf> |

**Denmark**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | No |
| Reasonable Accommodation Duty exists | No |

**Estonia**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | No |
| Reasonable Accommodation Duty exists | No |

**Finland**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes |
| Legislation: Non-Discrimination Act, *Yhdenvertaisuuslaki*, 1325/2014. <http://www.finlex.fi/fi/laki/ajantasa/2014/20141325> |
| Reasonable Accommodation Duty exists | Yes |
| Legislation: Section 15, Non-Discrimination Act, *Yhdenvertaisuuslaki*, 1325/2014. <http://www.finlex.fi/fi/laki/ajantasa/2014/20141325> |
| Other Comments: Reasonable accommodation is required in order to provide a person with disabilities with equal access to the services that public authorities provide, as well as goods and service. |

**France**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes |
| Legislation: Arts. 1 and 2(3), Law No. 2008-496 of 27 May 2008, *Loi n° 2008-496 du 27 mai 2008 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations.* <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000018877783> |
| Reasonable Accommodation Duty exists | No |
| Other Comments: While there is no obligation to make a reasonable accommodation in the field of healthcare, there are other relevant legal obligations. Article 41 of the law of 11 February 2005, provides for universal accessibility and covers premises dedicated to access to healthcare. This level of accessibility however has not been achieved.Law No. 2005-102 of 11 February 2005, *Loi n° 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées.* <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000809647>L141-1-1 of the Code of social action provides for a personal plan to compensate a person’s disability that must cover needs regarding access to health care.[[8]](#footnote-8) |

**Germany**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes |
| Legislation: Section 2(1)(5) General Act on Equal Treatment, *AllgemeinesGleichbehandlungsgesetz / AGG*, German and English version: <http://www.gesetze-im-internet.de/agg> |
| Reasonable Accommodation Duty exists | Yes  |
| Legislation: General Act on Equal Treatment, *AllgemeinesGleichbehandlungsgesetz / AGG*, German and English version: <http://www.gesetze-im-internet.de/agg> in combination with Art. 3 of the Basic Law (GG) / Constitution, <https://www.gesetze-im-internet.de/gg/BJNR000010949.html>. |
| Other Comments: See discussion of case law above. |

**Greece**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | No |
| Reasonable Accommodation Duty exists | No |
| Other Comments: Greek constitutions provides that ‘all persons’ have the right to health protection (Article 5(5)).  |

**Hungary**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes |
| Legislation: Art. 25, Legislation Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities.<http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0300125.TV&celpara=#xcelparam>Art. 7(1), Act CLIV of 1997 on Healthcare. <http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99700154.TV> |
| Reasonable Accommodation Duty exists | Not explicitly – but case law suggests that courts and the Equal Treatment Authority classify the unjustified refusal to provide reasonable accommodation as a form of discrimination, including in the field of healthcare. |
| Other Comments: Preferential treatment on basis of state of health or disability is also allowed with regard to healthcare (Art. 25(2) ETA).See discussion of case law above. |

**Ireland**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes |
| Legislation: Section 5(1), Equal Status Acts 2000-2018. <http://revisedacts.lawreform.ie/eli/2000/act/8/revised/en/html> |
| Reasonable Accommodation Duty exists | Yes |
| Legislation: Section 4, Equal Status Acts 2000-2018. <http://revisedacts.lawreform.ie/eli/2000/act/8/revised/en/html> |

**Italy**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes |
| Legislation: Art. 1, Act 67/2006, Provisions on the judicial protection of persons with disabilities who are victims of discrimination. [www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2006-03-01;67!vig](http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2006-03-01;67!vig) |
| Reasonable Accommodation Duty exists | No |

**Latvia**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes (judicial confirmation would be helpful) |
| Legislation: Art. 2, Law on Social Security, *Likums par sociālo drošību.* <http://likumi.lv/doc.php?id=36850> |
| Reasonable Accommodation Duty exists | No |

**Lithuania**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes. The Law on Equal Treatment is interpreted in this way by the Ombudsman and the courts, but the Law does not explicitly regulate discrimination in the context of healthcare, and there is an overall lack of clarity. |
| Legislation: Art. 8(1) of the Law on Equal Treatment.<https://www.e-tar.lt/portal/lt/legalAct/TAR.0CC6CB2A9E42/asr> |
| Reasonable Accommodation Duty exists | No |
| Other Comments: The Ombudsperson and courts interpret the duty to ‘ensure equal access to all consumers’ as also being a duty to make goods and services, including healthcare, accessible to persons with disabilities.  |

**Luxembourg**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes |
| Legislation: Art 2(1)(e) Law of 28 November 2006 general anti-discrimination law. [http://www.legilux.public.lu/leg/a/archives/2006/0207/a207.pdf#](http://www.legilux.public.lu/leg/a/archives/2006/0207/a207.pdf) |
| Reasonable Accommodation Duty exists | No |

**Malta**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes |
| Legislation: Art. 13A, Equal Opportunities (Persons with Disability) Act 2000.<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8879&l=1> |
| Reasonable Accommodation Duty exists | Judicial interpretation needed to clarify situation |
| Legislation: Art. 13, Art. 13A, Equal Opportunities (Persons with Disability) Act 2000.<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8879&l=1> |

**The Netherlands**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes |
| Legislation: Art. 5b(c) Disability Discrimination Act, *Wet gelijke behandeling op grond van handicap of chronische ziekte (WGBH/CZ).*<https://wetten.overheid.nl/BWBR0014915/2020-01-01> |
| Reasonable Accommodation Duty exists | Yes |
| Legislation: Arts. 2(1) and. 5b(c) Disability Discrimination Act, *Wet gelijke behandeling op grond van handicap of chronische ziekte (WGBH/CZ)*.<https://wetten.overheid.nl/BWBR0014915/2020-01-01> |

**Poland**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | No |
| Reasonable Accommodation Duty exists | No |

**Portugal**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | No |
| Reasonable Accommodation Duty exists | No |
| Other Comments: Art 64 of the constitution provides: ‘everyone has the right to the protection of health and the duty to defend and promote health’. <https://dre.pt/constitution-of-the-portuguese-republic> (in English) |

**Romania**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes |
| Legislation: Art 10(a) (b), Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (the Anti-discrimination Law), *Ordonanța de Guvern 137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare*. <http://www.cdep.ro/pls/legis/legis_pck.htp_act_text?idt=24161> |
| Reasonable Accommodation Duty exists | No |
| Other Comments: Disability is not explicitly mentioned as a protected ground, but case law and decisions of the National Council for Combating Discrimination (NCCD) treat disability as a protected ground in the context of discrimination with regard to healthcare.Art. 63, Law 448/2006 on the protection and promotion of the rights of disabled persons provides for accessibility of public buildings of people with disabilities. English translation available at: <http://www.equalrightstrust.org/ertdocumentbank/LEGE%20448%20engleza.pdf> |

**Slovakia**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes |
| Legislation: Section 5(1) and 5(2)(a) (b) Act No. 365/2004 on Equal Treatment in Certain Areas and Protection Against Discrimination (Anti-discrimination Act), *zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov,* (*antidiskriminačný zákon*). <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/365/20160102?ucinnost=31.12.2020>Act No. 576/2004 on Healthcare, Services Related to the Provision of Healthcare and on amending and supplementing certain acts, as amended (Act on Healthcare), *zákon č. Act No. 576/2004 Z. z. o zdravotnej starostlivosti, službách súvisiacich s poskytovaním zdravotnej starostlivosti a o zmene a doplnení niektorých zákonov*.<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/576/20210119?ucinnost=31.12.2020> |
| Reasonable Accommodation Duty exists | Yes (but it is less elaborated than in the field of employment). |
| Legislation: Section 2(3) Act No. 365/2004 on Equal Treatment in Certain Areas and Protection Against Discrimination (Anti-discrimination Act), *zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov* (*antidiskriminačný zákon*). <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/365/20160102?ucinnost=31.12.2020> |
| Other Comments: The UN Committee on Economic, Social and Cultural Rights in its 2019 concluding observations on the third periodic report of Slovakia expressed its concerns that Slovak legislation defines only the failure to provide reasonable accommodation as discrimination against persons with disabilities in the context of employment. In this regards the Committee recommended Slovakia amend domestic anti-discrimination legislation to ensure formal and unequivocal recognition that denial of reasonable accommodation constitutes discrimination. Concluding observations of the UN Committee on Economic, Social and Cultural Rights (E/C.12/SVK/CO/3), 14 November 2019. |

**Slovenia**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes |
| Legislation: Article 2(1), indent 5, Protection Against Discrimination Act, 21 April 2016, *Zakon o varstvu pred diskriminacijo.* <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7273>  |
| Reasonable Accommodation Duty exists | No |
| Other Comments: Arts 7(2), 8(3), 9(2), 14, Act on Equal Opportunities for People with Disabilities 2010 establish a duty to provide accessibility in relation to public buildings and receiving information in an accessible format. Act amending the Act on Equal Opportunities for People with Disabilities, 30 June 2014, *Zakon o spremembah in dopolnitvah Zakona o izenačevanju možnosti invalidov.* <http://www.uradni-list.si/1/objava.jsp?sop=2014-01-2080> |

**Spain**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes |
| Legislation: RLD 1/2013, 29 November 2013, General Law on the Rights of Persons with Disabilities and their Social Inclusion, *RLD 1/2013, 29 Noviembre, Ley General de derechos de las personas con discapacidad y de su inclusión social.* <http://www.boe.es/boe/dias/2013/12/03/pdfs/BOE-A-2013-12632.pdf> Art. 3. General Health Law 14/1986, of 24 April 1985, *Ley 14/1986, de 25 de abril de 1986, General de Sanidad*) (BOE, 29 April 1986).<https://www.boe.es/buscar/pdf/1986/BOE-A-1986-10499-consolidado.pdf> |
| Reasonable Accommodation Duty exists | Yes |
| Legislation: RLD 1/2013, 29 November 2013, General Law on the Rights of Persons with Disabilities and their Social Inclusion, *RLD 1/2013, 29 Noviembre, Ley General de derechos de las personas con discapacidad y de su inclusión social.* <http://www.boe.es/boe/dias/2013/12/03/pdfs/BOE-A-2013-12632.pdf> |

**Sweden**

|  |  |
| --- | --- |
| Disability Discrimination Prohibited | Yes |
| Legislation: Section 13, Discrimination Act (2008:567), available in Swedish and English:<https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/diskrimineringslag-2008567_sfs-2008-567> <https://www.do.se/other-languages/english/discrimination-act/> |
| Reasonable Accommodation Duty exists | Yes |
| Legislation: Section 4(3) and Section 13 Discrimination Act (2008:567), available in Swedish and English:<https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/diskrimineringslag-2008567_sfs-2008-567> <https://www.do.se/other-languages/english/discrimination-act/> |

1. Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation {SEC(2008) 2180} {SEC(2008) 2181} COM/2008/0426 final - CNS 2008/0140. [↑](#footnote-ref-1)
2. Judgment of the Supreme Administrative Court, *Minister of Healthcare v. K.I.*, Decision No. 5302 in case No. 11143/ 2016, 24 April 2018. <http://www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/dfeeefc27d3b094fc22582740027341f?OpenDocument> [↑](#footnote-ref-2)
3. Judgment of the Federal Constitutional Court (*Bundesverfassungsgericht,BVerfG*), 30 January 2020, 2BvR1005/18,ECLI:DE:BVerfG:2020:rk20200130.2bvr100518. [↑](#footnote-ref-3)
4. Equal Treatment Authority, EBH/10/2013, March 2013, <https://www.egyenlobanasmod.hu/en/jogeset/ebh102013> [↑](#footnote-ref-4)
5. Section 10(2) Federal Disability Equality Act. [↑](#footnote-ref-5)
6. See: <http://www.bizeps.or.at/gleichstellung/schlichtungen/index.php?nr=177>. This paragraph is based on text in: Lisa Waddington and Anne Poulos, in Jozef H.H.M. Dorscheidt & Jaap E. Doek (eds), *Children’s Rights in Healthcare*, Brill, 2018, 357-381. [↑](#footnote-ref-6)
7. I am grateful to Corina Demetriou, the Cypriot non-discrimination expert from the European Equality Law Network, for clarifying the legal situation in Cyprus. [↑](#footnote-ref-7)
8. I am grateful to Sophie Latraerse, the French non-discrimination expert from the European Equality Law Network, for clarifying the legal situation in France. [↑](#footnote-ref-8)