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Diverging Pathways: Accommodation of Worker Diversity and the Case-Law of the Court of Justice

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1. *Introduction*

Writing in 2002, Professor Marco Biagi observed "further efforts must be made in order to make the principle of equality more effective in the labour market. In order to make this achievement more realistic non-traditional tools must also be experimented with"[1]. Although almost one quarter of a century has passed since these words, they continue to resonate with today's world of work. In the intervening period, workplace accommodations emerged in Europe as an innovative way of tackling labour market disadvantage. Accommodations can be described as measures that seek to remove or mitigate barriers to participation in employment. These adjustments can relate to physical infrastructure, equipment and technologies, but they can also extend to all the ways in which work is organised, including

* This article is based on a paper presented at the XXIII International Conference in Commemoration of Professor Marco Biagi held at the Fondazione Marco Biagi in March 2026.

[1] Biagi, *Equality and the Labour Market*, in *IJCL*, 2002, p. 127.

policies and procedures. Workplace accommodations are most frequently associated with advancing equality for persons with disabilities, but they are a general technique that can be used to respond to the obstacles that arise when human diversity encounters "standard" operating methods[2]. For example, consider an occupational requirement to work a variety of shifts at different times and days. This could be difficult to reconcile with the availability of care services for those workers with caring responsibilities. It could be problematic to combine with some workers' religious observance requirements. It might not be suitable for those workers whose health requires a regular pattern of rest. In these scenarios, modifying the standard work schedule could be a way to remove the barrier that it presents for certain workers. The premise of workplace accommodations is that treating all persons in an identical fashion can be inimical to the pursuit of equality. At times, providing different treatment is necessary to bring about "substantive equality"[3]. Yet genuine dilemmas arise around the circumstances in which equality demands a departure from treating people in the same manner[4]. In addition, accommodation requests can throw up thorny questions around how to balance the rights and interests of all the parties affected. This includes the person who needs the accommodation, their employer, co-workers, and third parties (such as customers and service-users).

EU anti-discrimination law explicitly endorses workplace accommodations in respect of persons with disabilities. Directive 2000/78, hereafter the "Employment Equality Directive", obliges employers to provide reason-

[2] Lawson, *Reasonable Accommodation Law in Europe: Where Now and Where Next?*, in O'Cinneide, Ringelheim, Solanke (Eds.), *Research Handbook on European Anti-Discrimination Law*, Edward Elgar Publishing, 2025, p. 209. See also, Davidov, Mundlak, *Accommodating All? (or: 'Ask Not What You Can Do for the Labour Market; Ask What the Labour Market Can Do for You')*, in Blanpain, Hendrickx (Eds.), *Reasonable Accommodation in the Modern Workplace: Potential and Limits of the Integrative Logics of Labour Law*, Wolters Kluwer, 2016, p. 195; Buonocore Porter, *Accommodating Everyone*, in *SHLR*, 2016, p. 85.

[3] Lawson, cit., p. 209. On substantive equality, see, inter alia, Fredman, *Discrimination Law*, 3rd edn, Oxford University Press, 2022, ch. 1; Loenen, *The Conceptualization of Equality and Non-discrimination as Legal Standards: From Formal to More Substantive Equality*, Brill, 2024, ch. 3; DeVos, *The European Court of Justice and the March Towards Substantive Equality in European Union Antidiscrimination Law*, in *IJDL*, 2020, p. 62.

[4] Minow, *Making All the Difference: Inclusion, Exclusion, and American Law*, Cornell University Press, 1990, pp. 20-21.

able accommodation for persons with disabilities[5]. In respect of the other protected characteristics found within EU anti-discrimination law, there is no express duty of accommodation, but indirect discrimination is prohibited. Article 2(2)(b) of the Employment Equality Directive states:

"indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary…"[6].

As discussed further in this article, there is potential for the prohibition of indirect discrimination to be interpreted in a way that places employers under an obligation to provide accommodations.[7] For example, an employer's requirement to work Saturdays is likely to put persons with particular religious beliefs at a particular disadvantage, e.g. Jews or Seventh Day Adventists who observe sabbath from sunset on Friday. If we assume that the employer has legitimate business reasons for requiring work on Saturdays, the question arises as to whether it is "appropriate and necessary" for the employer to apply this schedule to the employees affected. This test opens the door to consider whether it would be proportionate for the employer to make an adjustment to the schedule to accommodate the religious practices of certain employees.

This article explores how workplace accommodations have been handled within the case-law of the Court of Justice of the European Union

[5] Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16, article 5.

[6] There is an equivalent prohibition of indirect discrimination on grounds of racial or ethnic origin in article 2(2)(b), Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22. Indirect discrimination on grounds of sex is prohibited in several legislative instruments including article 2(1)(b), Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) [2006] OJ L204/23.

[7] See, *inter alia*, Bribosia, Rorive, *Reasonable Accommodation Beyond Disability in Europe?*, Office for Official Publications of the European Union, 2013, p. 38; Howard, *Law and the Wearing of Religious Symbols in Europe*, Taylor & Francis, 2019, p. 232; Vickers, *Conscientious Objections in Employment: Is a Duty of Reasonable Accommodation the Answer?*, in Adenitire (Ed.), *Religious Beliefs and Conscientious Exemptions in a Liberal State*, Hart Publishing, 2019, p. 186; Loenen, *cit.*, p. 161.

(CJEU). It identifies three situations where the Court has been confronted with applicants seeking workplace accommodations on the basis of EU anti-discrimination law. Section 2 considers case-law on persons with disabilities; section 3, case-law on persons with caring responsibilities; and section 4, case-law on persons with religious beliefs and practices. The examination of this case-law exposes considerable divergence in the Court's approach. The Court has embraced and expanded workplace accommodations for persons with disabilities. Recently, it has shown willingness to extend this case-law to persons with caring responsibilities, at least in respect of those caring for persons with disabilities. In contrast, the Court has been ambivalent towards the possibility of workplace accommodations for persons with religious beliefs. Section 5 concludes the article by analysing the reasons that may explain the variations within the case-law. Obviously, the legislative framework is the primary reason why accommodation duties are stronger in respect of persons with disabilities. The article finds, however, that this does not entirely account for the pattern of the Court's case-law.

2. *Embracing Workplace Accommodations: Persons with Disabilities*

This section examines the approach taken by the CJEU to making workplace accommodations for persons with disabilities. The duty to provide reasonable accommodation is set out in Article 5 of the Employment Equality Directive:

"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 employers 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."

There has been a significant body of case-law that relates to this provision[8], but, for the purposes of this article, it is sufficient to concentrate on

[8] A more detailed account of this case-law can be found elsewhere in the academic literature. See, *inter alia*, Ferri, Lawson, *Reasonable Accommodation for Disabled People in Employment: a Legal Analysis of the Situation in EU Member States, Iceland, Liechtenstein and Norway*, Publications Office of the European Union, 2016, pp. 51-55; Daly, Whelan, *Disability in Employment*

the overall trajectory that emerges. This section contends that the Court has adopted an expansive interpretation of the legislation, which has been guided by an underlying goal of promoting labour market inclusion for persons with disabilities. Specifically, it examines two strands that emerge from the case-law: (i) the nature of the reasonable accommodation duty; and (ii) the scope of appropriate measures. It must be acknowledged that there are other aspects of the Court's case-law on disability rights that have attracted criticism[9]. Without contradicting those perspectives, the argument here is that its case-law on reasonable accommodation has been largely favourable towards disability rights.

2.1. *The Nature of the Reasonable Accommodation Duty*

Although Article 5 placed a duty to provide reasonable accommodation on employers, it did not clarify how it related to the prohibition of discrimination. Article 2 of the Directive identifies several forms of conduct that constitute "discrimination": direct discrimination, indirect discrimination, harassment, and an instruction to discriminate. A failure to provide reasonable accommodation is not mentioned in this list. The distinction thereby drawn between "discrimination" and "accommodation" could have been the basis for a more restrictive interpretation of the latter. Waddington pointed out that excluding reasonable accommodation from the concept of discrimination could have legal and practical consequences for complainants, such as leading to weaker sanctions and remedies[10]. Moreover, this

Equality Law: A Reappraisal of the Reasonable Accommodation Duty and Issues Arising in its Implementation, in *MJECL*, 2021, p. 744; Gyulavári, *Recent CJEU Case Law on 'Reasonable Accommodation' at Work: Towards the Recognition of a New Discrimination Form*, ERA Forum, 2023, p. 361; Waddington, Broderick, *Court Practices Regarding Disability Discrimination, Including Reasonable Accommodation, at EU and Member State Level, and in Light of the UN CRPD*, Publications Office of the European Union, 2024, pp. 28-38; Lawson, *cit.,* pp. 218-221.

[9] Academic literature has often criticised the Court's stance on the definition of disability: Broderick, Waddington, *Emerging Trends in Disability Anti-Discrimination Law in Europe*, in O'Cinneide, Ringelheim, Solanke (Eds.), *Research Handbook on European Anti-Discrimination Law*, Edward Elgar Publishing, 2025, p. 340. There has also been criticism of its use of the EU Charter of Fundamental Rights in relation to disability: Ferri, *The Unorthodox Relationship between the EU Charter of Fundamental Rights, the UN Convention on the Rights of Persons with Disabilities and Secondary Rights in the Court of Justice Case Law on Disability Discrimination*, in *European Constitutional Law Review*, 2020, p. 275.

[10] Waddington, *Equal to the Task: Re-examining EU Equality Law in the Light of the United*

placed EU law at odds with the UN Convention on the Rights of Persons with Disabilities (CRPD), which was adopted in 2006[11]. The Convention is clear that "denial of reasonable accommodation" constitutes "discrimination on the basis of disability"[12].

Although there was the potential for the distinction between "discrimination" and "accommodation" to prove a weakness in the Directive, an overview of the case-law reveals how the Court has avoided this jeopardy. At the outset, it identified that failure to provide reasonable accommodation could be the basis for a finding of direct or indirect discrimination. *Chacón Navas* concerned an employee who was dismissed following long-term sickness[13]. While the judgment is primarily concerned with the definition of disability[14], the Court held that:

"The prohibition, as regards dismissal, of discrimination on grounds of disability … precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post"[15].

In essence, this implies that it constitutes prohibited discrimination to dismiss a person with a disability if the provision of reasonable accommodation would have permitted the person to perform the essential functions of their position.

The Court's reasoning on the connection between discrimination and accommodation has become clearer with the evolution of the case-law. *Nobel Plastiques Ibérica* concerned an employee with a disability who had been selected for redundancy[16]. The criteria used included productivity rate,

Nations Convention on the Rights of Persons with Disabilities, in *European Yearbook of Disability Law*, 2013, p. 190.

[11] Sixty-first session of the General Assembly, A/RES/61/106, 12 December 2006.

[12] CRPD, article 2. See further, Ferri, Lawson, *cit.*, pp. 48-51; Broderick, Ferri, *International and European Disability Law and Policy - Text, Cases and Materials*, Cambridge University Press, 2019, pp. 96-106; Lawson, *cit.*

[13] Case C-13/05 *Chacón Navas v Eurest Colectividades SA* EU:C:2006:184.

[14] See further on this aspect, Waddington, *Case C-13/05, Chacón Navas v. Eurest Colectividades SA, judgment of the Grand Chamber of 11 July 2006,* in *CMLR*, 2007, p. 487; Waddington, *Saying All the Right Things and Still Getting It Wrong: The Court of Justice's Definition of Disability and Non-Discrimination Law*, in *MJECL*, 2015, p. 576.

[15] *Chacón Navas*, *cit.,* para 51.

[16] Case C-397/18 *DW v Nobel Plastiques Iberica SA* EU:C:2019:703.

level of multi-skilling on the job, and rate of absenteeism. The applicant argued that the adverse scores that she received under those criteria were linked to the effects of her disability. The CJEU accepted that these criteria could place persons with a disability at a particular disadvantage, so this was a potential case of indirect discrimination[17]. At this point, the Court brings into play the duty to provide reasonable accommodation. Specifically, the Court concluded that the selection criteria could not be justified if the employer had not taken appropriate measures to provide reasonable accommodation for the worker, prior to her selection for redundancy[18]. In justifying this conclusion, the Court stated that "it must be borne in mind" that the definition of discrimination on grounds of disability found in Article 2 CRPD includes denial of reasonable accommodation[19]. This demonstrated an awareness that the text of the CRPD was different to that of the Directive, but an apparent disposition on the part of the Court to avoid any substantive conflict of norms. Gyulavári argues that this case is a prime illustration of the nexus between the reasonable accommodation duty and exemptions from the prohibition of discrimination[20]. The accommodation duty becomes applicable in the context of determining whether the company's redundancy criteria were objectively justified.

In *Tartu Vanglu*, a prison officer had been dismissed because his hearing had fallen below the minimum level required for his role. He was not, however, permitted to use hearing aids during the assessment of his auditory acuity. The referring court sought guidance from the CJEU on whether this could constitute direct discrimination on grounds of disability. The CJEU held that this was a difference of treatment because of disability, so it fell within the concept of direct discrimination[21]. Such conduct may be permitted if it constitutes a genuine and determining occupational requirement[22]. In considering whether it was a justified occupational requirement, the Court recalls the employer's duty to provide reasonable accommodation. Specifically, permitting the employee to use a hearing aid during the assessment of his hearing was an "appropriate measure" that the employer could

[17] Paras 59-60.
[18] Para 71.
[19] Para 72.
[20] Gyulavári, *cit.*, p. 365.
[21] Case C-795/19 *XX v Tarta Vanglu* EU:C:2021:606, para 30.
[22] Directive 2000/78, article 4(1).

have taken[23]. This was in the context of an employee who had performed his role satisfactorily for 14 years and in the absence of any indication that permitting the use of a hearing aid would give rise to a disproportionate burden for the employer[24]. Accordingly, national legislation that required the employee to be dismissed with no ascertainment of whether reasonable accommodation could be provided was contrary to the Directive[25]. In this case, the Court converged the concept of direct discrimination with the duty to provide reasonable accommodation[26].

Recent case-law has continued in this trajectory. In *Pauni*, the Court had to determine whether a collective agreement that permitted the dismissal of an employee after 180 days of sick leave constituted indirect discrimination on grounds of disability[27]. The Court held that such a provision could only be justified if, prior to the employee's dismissal, the employer was required to provide reasonable accommodation that might enable the employee to return to work[28]. In summary, the Court has rejected an approach that considered "discrimination" and "accommodation" as substantively different legal norms. Instead, it has blended these concepts. This has minimised the significance of reasonable accommodation not being mentioned in the definition of discrimination in the Directive and, in so doing, it has favoured harmony with the CRPD. Nevertheless, Gyulavári points out that most of the Court's case-law achieves this outcome through connecting the accommodation duty with the exemption tests for direct and indirect discrimination[29]. As a matter of legal doctrine, this remains distinct from the notion that failure to provide reasonable accommodation is *per se* discrimination on grounds of disability. These cases also display a common theme of seeking to sustain the relationship between the employer and the

[23] *Tarta Vanglu*, cit., para 51.

[24] Para 51.

[25] Para 53.

[26] See also Case C-824/19 *TC and UB v Komisia za zashtita ot diskriminatsia and VA* EU:C:2021:862, where the Court held that direct discrimination could arise where there was a failure to investigate the possibility of reasonable accommodation.

[27] Case C-5/24 *Pauni* EU:C:2025:689. See further, Ylhäinen, *Indirect Discrimination and the Duty to Accommodate: Reframing the Boundaries of Directive 2000/78 in Bervidi and Pauni*, in *ELLJ*, 2026, p. 339.

[28] Paras 54-61.

[29] Gyulavári, *cit.*, p. 375. As discussed below, he points out that in this respect the Court's decision in *HR Rail* departs from the pattern of its other case-law.

employee. On several occasions, the Court has asserted the importance of not overlooking the potential consequences of job loss for persons with disabilities "who generally face greater difficulties than non-disabled persons in re-entering the labour market"[30].

2.2. *The Scope of Appropriate Measures*

Article 5 of the Employment Equality Directive places a duty on employers to take "appropriate measures". Guidance on the meaning of this term can be found in recital 20 in the preamble of the Directive, which states that these are:

"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."

Although this indicates that a flexible approach should be adopted, the Court has played a critical role in confirming that appropriate measures should be interpreted broadly. This issue was central to the *HK Danmark* cases[31]. In these cases, the applicants developed medical conditions that prevented them continuing to work full-time. After a period of sickness absence, they were both dismissed from their jobs. Subsequently, their trade union brought proceedings arguing that they should have been offered reduced hours because of the duty to provide reasonable accommodation[32]. The employers argued that reducing working hours did not fall within the scope of "appropriate measures" according to Article 5 of the Directive. They contended that the reference to "patterns of working time" in recital 20 was limited to altering the "rhythms of work", such as providing more breaks for workers with disabilities[33].

These cases arose after the EU had ratified the CRPD[34] and the Court

[30] Cases C-335/11 and 337/11 *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab; HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S* EU:C:2013:222, para 91; Case C-270/16 *Ruiz Conejero v Ferroser Servicios Auxiliares SA, Ministerio Fiscal* EU:C:2018:17, para 51; *Pauni*, *cit.*, para 50.

[31] *HK Danmark*, cit.

[32] Para 23.

[33] Para 51.

[34] Council Decision 2010/48/EC concerning the conclusion, by the European Com-

confirmed that this meant that the Employment Equality Directive "must, as far as possible, be interpreted in a manner consistent with that convention"[35]. It drew attention to the "broad definition" of reasonable accommodation found in Article 2 CRPD[36]. Accordingly, it held that reasonable accommodation encompasses the "elimination of the various barriers that hinder the full and effective participation of persons with disabilities in professional life on an equal basis with other workers"[37]. Ultimately, this was a purposive approach that favoured labour market inclusion[38]; if a reduction in working hours would allow the worker to continue in employment, then it fell within the concept of an "appropriate measure"[39].

HK Danmark concerned employees who wished to continue in their existing positions, albeit with reduced hours. A more challenging question was whether reasonable accommodation encompassed transfer to a *different* job within the same organisation. This was confronted by the Court in *HR Rail*[40]. The complainant was a trainee working as a technician on the Belgian railways. After one year, he was diagnosed with a heart condition, and this required the fitting of a pacemaker. The railway tracks contained electromagnetic fields, but the pacemaker was incompatible with repeated exposure to such fields. Consequently, the company's medical centre confirmed that he was unfit to continue in his existing position. The complainant was temporarily reassigned to the role of warehouseman, but he was dismissed after three months. According to the company's staff rules, reassignment in the event of disability was only available to permanent members of staff and not to trainees. The Belgian *Conseil d'État* sought an interpretation of Article 5 of the Employment Equality Directive in relation to whether it required an employer to assign an employee to another post where, because of disability, he was no longer able to perform the essential functions of his current position[41]. When considering the

munity, of the United Nations Convention on the Rights of Persons with Disabilities [2010] OJ L23/35.

[35] *HK Danmark*, cit., para 32.

[36] Para 53.

[37] Para 54.

[38] Broderick, Waddington, *cit.*, p. 351.

[39] *HK Danmark*, cit., para 56.

[40] Case C-485/20 *XXXX v HR Rail* EU:C:2022:85.

[41] Para 24.

wording of the Directive, recital 17 appeared to militate against such an interpretation[42]. It states:

"This Directive 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, without prejudice to the obligation to provide reasonable accommodation for people with disabilities."

In *HR Rail*, it was clear that, even after reasonable accommodation had been provided, the employee could no longer perform "the essential functions of the post concerned". Nevertheless, Advocate-General Rantos argued in favour of a purposive approach to the interpretation of the duty on the basis that reasonable accommodation was "the means to achieve substantive equality in a concrete and individualised situation of discrimination"[43]. Drawing inspiration from the CRPD and the EU Charter of Fundamental Rights (CFR), he contended that "people with disabilities should be kept in employment rather than being dismissed for unfitness, which should only be a last resort"[44]. The judgment of the Court followed his reasoning. Surprisingly, it made no reference to recital 17. Instead, it cited the definition of appropriate measures found in recital 20. This mentions "measures to adapt the workplace to the disability". In the view of the Court, adaptation of the "workplace" extended to reassignment to another position therein[45]. Gyulavári highlights that this case was also significant because it treated the duty of accommodation as a free-standing legal obligation, which was not dependent on a finding of direct or indirect discrimination[46].

The interpretation of provisions of EU law relies on a combined analysis of the text, context, and purpose[47]. *HR Rail* illustrates that the Court has been guided by purpose in its interpretation of Article 5 of the Employment Equality Directive. A stronger emphasis on the text of the Directive might have confined the duty to provide reasonable accommodation to

[42] Daly, Whelan, *cit.*, p. 748.

[43] Case C-485/20 *XXXX v HR Rail* EU.:C:2021:916, Opinion of AG Rantos, para 84.

[44] Para 68.

[45] *HR Rail*, cit., para 41.

[46] Gyulavári, *cit.*, p. 375.

[47] Lenaerts, *Interpretation and the Court of Justice: A Basis for Comparative Reflection*, International Lawyer, 2007, p. 1016. See, e.g., Case C-19/23 *Denmark v Parliament and Council (Adequate Minimum Wages)* EU:C:2025:865, para 106.

situations where the employee remains capable of performing the essential functions of "the post concerned"[48]. Instead, it relied upon other sources to take a wider view of when reasonable accommodation should be available. For example, it pointed out that Article 26 CFR speaks of "the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration"[49]. In *Ca Na Negreta*, the Court reaffirmed that reassignment to another position fell within the scope of reasonable accommodation[50]. In support of this conclusion, it cited also Article 27(1) CRPD on work and employment[51]. This mentions the situation of persons who acquire a disability during the course of employment and it requires states to prohibit discrimination in the "continuance of employment".

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Standing back from the detail, the CJEU has proved to be a receptive venue for applicants seeking to rely upon the duty to provide reasonable accommodation[52]. Lawson and Waddington observed that there has been "clarity and resolution" in the Court's interpretation of Article 5 of the Employment Equality Directive[53]. It has sustained this approach by emphasising the need to interpret the duty in the light of the fundamental rights of persons with disabilities found in the CRPD and, more recently, the CFR. A practical focus on doing what it takes to promote the inclusion of persons with disabilities in the workplace has allowed the Court to eschew a narrow reading of the text of the Directive. This is particularly evident in its endorsement of job reassignment as a form of accommodation that must be

[48] AG Rantos argued that, "read broadly", the reference to the "post concerned" in recital 17 could be taken to mean the post to which the employee has been reassigned: *HR Rail*, cit., para 74.

[49] *HR* Rail, cit., para 42.

[50] Case C-631/22 *JMAR v Ca Na Negreta SA* EU:C:2024:53.

[51] Para 50.

[52] Miller makes the case that the whole body of the Court's case-law on disability rights has been "quite plaintiff-friendly": Miller, *The European Disability Rights Revolution*, in *ELR*, 2019, p. 88.

[53] Lawson, Waddington, *The Unfinished Story of EU Disability Non-discrimination Law*, in Bogg, Costello, Davies, (Eds.), *Research Handbook on EU Labour Law,* Edward Elgar Publishing, 2016, p. 494.

considered. The Court has yet to declare unequivocally that denial of reasonable accommodation constitutes a form of discrimination for the purposes of EU law. Nevertheless, it can be inferred from its integrated reading of the Directive's provisions that non-discrimination and accommodation are inextricably linked concepts.

3. *Extending Workplace Accommodations to Persons with Caring Responsibilities*

Persons with caring responsibilities can encounter barriers to participation in employment because of the challenges connected to combining working and caring. Given that women continue to be over-represented amongst those providing care, this issue is closely intertwined with gender equality in the labour market[54]. The value of workplace accommodations for those with caring responsibilities has been recognised by the EU legislator in the 2019 Work-life Balance Directive.[55].This created a right for certain employees to request flexible working arrangements for caring purposes[56]. In brief, this extends to employees with children up to at least the age of eight, as well as carers[57]. Workers can request to "adjust their working patterns", which includes "remote working arrangements, flexi-

[54] Waddington, *Carers, Gender and Employment Discrimination: What Does EU Law Offer Europe's Carers?*, in Moreau (Ed.), *Before and After the Economic Crisis: What Implications for the 'European Social Model'?*, Edward Elgar Publishing, 2011, pp. 103-107.

[55] Directive 2019/1158/EU on work-life balance for parents and carers and repealing Council Directive 2010/18/EU [2019] OJ L188/79. See further, Oliveira, De La Corte-Rodríguez, Lütz, *The New Directive on Work-Life Balance: Towards a New Paradigm of Family Care and Equality?*, in *ELR*, 2020, p. 295; Chieregato, *A Work-Life Balance for All? Assessing the Inclusiveness of EU Directive 2019/1158*, in *IJCLLIR*, 2020, p. 59; Weldon-Johns, *EU Work-family Policies Revisited: Finally Challenging Caring Roles?*, in *ELLJ*, 2021, p. 301; Bell, Waddington, *Similar, Yet Different: the Work-life Balance Directive and the Expanding Frontiers of EU Non-discrimination Law*, in *CMLRev*, 2021, p. 1401; De la Corte-Rodríguez, *The Transposition of the Work-Life Balance Directive in EU Member States (II): Considerable Work Still To Be Done*, Publications Office of the European Union, 2024.

[56] Directive 2019/1058, article 9. For a more detailed analysis, see Waddington, Bell, *The Right to Request Flexible Working Arrangements Under the Work-life Balance Directive - A Comparative Perspective*, in *ELLJ*, 2021, p. 508.

[57] "Carers" are defined as "a worker providing personal care or support to a relative, or to a person who lives in the same household as the worker, and who is in need of significant care or support for a serious medical reason": Directive 2019/1058, article 3(1)(d).

ble working schedules, or reduced working hours"[58]. The right to request flexible working arrangements for caring purposes is not the same as the duty to provide reasonable accommodation. Primarily, it places the employer under a procedural duty to consider and respond to the request, whereas reasonable accommodation is an obligation to *act*, ie to take appropriate measures[59]. Notwithstanding the important differences that exist between the two duties, they share a common premise. Both recognise that fostering inclusion in the labour market may require adaptation of the "standard" way of organising work.

Even if the Work-life Balance Directive does not include a duty to provide reasonable accommodation for persons with caring responsibilities, there is the potential for this to be derived from other provisions of EU anti-discrimination law. Indeed, several cases have reached the CJEU where workers sought adjustments to their working conditions because of caring responsibilities[60]. These cases mostly arose under related legal instruments, such as the Parental Leave Directive[61] or the Part-Time Work Directive[62]. The Court has not yet fully explored whether failing to provide an accommodation to a worker with caring responsibilities could constitute a breach of the prohibition of indirect discrimination on grounds of sex[63]. In contrast, the Court has confronted equivalent issues in relation to the duty to provide reasonable accommodation in the Employment Equality Directive and workers who are carers of persons with disabilities.

The Court's first venture into this terrain was *Coleman*[64]. This case concerned alleged discrimination encountered at work by the mother of a child with a disability. A preliminary issue in the legal proceedings was whether the prohibition of discrimination on grounds of disability could be relied upon by a person without a disability (the mother), but who experienced discrimination because of her association with a person with a disability (her child). In a seminal decision, the CJEU held that the Employment Equality Directive "applies not to a particular category of person but by reference to

[58] Article 3(1)(f).
[59] See further, Waddington, Bell, *cit.*, p. 516.
[60] Waddington, Bell, *cit.*, pp. 513-514.
[61] E.g., Case C-366/18 *Ortiz Mesonero v UTE Luz Madrid Centro* EU:C:2019:757.
[62] E.g., Case C-221/13 *Mascellani v Ministero della Giustizia* EU:C:2014:2286.
[63] On the potential for such a claim, see Waddington, 2011, *cit.*, p. 111.
[64] Case C-303/06 *Coleman v Attridge Law and Law* EU:C:2008:415.

the grounds"[65]. Consequently, direct discrimination on grounds of disability included a situation where an employee was treated less favourably because of their child's disability, and where care for the child "is provided primarily by that employee"[66]. In the course of its judgment, the Court acknowledged that "Directive 2000/78 includes a number of provisions which, as is apparent from their very wording, apply only to disabled people"[67]. Specifically, it mentioned the duty to provide reasonable accommodation, thus indicating that persons without a disability could not rely upon that provision. The decision in *Coleman* opened the door to the concept of "discrimination by association"[68], but simultaneously closed the door on reasonable accommodation claims being framed in this manner.

Seventeen years later, the Court revised its position in *Bervidi*[69]. This case concerned the mother of a minor child with "extensive and comprehensive needs arising from disability"[70]. The applicant worked as a station operator for the Rome underground transport system. Station operators had "alternating and rotating shifts", but she sought permanent assignment to a morning shift.[71]. This was to enable her to support her child's care programme, which took place in the afternoons. On a provisional basis, her employer assigned her to a fixed location with a preferential working schedule (compared to other employees), but it did not grant her fixed working hours on a permanent basis, as she had requested. In subsequent legal proceedings, the Italian Supreme Court of Cassation referred to the CJEU two key issues: whether a "family caregiver of a severely disabled child" could rely on the prohibition of indirect discrimination on grounds of disability, and whether the employer was under a duty to provide reasonable accommodation for such caregivers[72]?

It was not clear from *Coleman* that the prohibition of indirect discrimination on grounds of disability could be relied upon by carers of persons

[65] Para 50.

[66] Para 56.

[67] Para 39.

[68] See further, Waddington, *S. Coleman v. Attridge Law and Steve Law,* in *CMLRev*, 2009, p. 665; Connor, *Discrimination by association: a step in the right direction*, in *JSWFL*, 2010, p. 59.

[69] Case C-38/24 *Bervidi* EU:C:2025:690. See further, Waddington, *An Iceberg of a Judgment: Case C-38/24 Bervidi*, in *MJECL*, forthcoming.

[70] Para 20.

[71] Para 21.

[72] Para 32.

with disabilities. Article 2(2)(b) of the Employment Equality Directive refers to measures that "would put persons having … a particular disability" at a particular disadvantage. Waddington observed that recognising that indirect discrimination could occur by reason of association with the protected characteristic "would be in line with the broad purpose of the Directives, even though it would not be in accordance with a literal interpretation of the wording"[73]. In *Bervidi*, the Court opted for a purposive, rather than a literal, approach to interpreting this provision. It held that the rationale of its decision in *Coleman* was that discrimination *on grounds of* disability was not confined to persons with disabilities, but extended to those who experienced such discrimination "by association"[74]. Accordingly, the Court held that the Directive meant that discrimination by association could also take the form of indirect discrimination[75]. Notably, the Court argued that this was an interpretation of the Directive that would be compliant with various provisions of the CFR: Article 21(1) on the right to non-discrimination; Article 24 on the rights of the child; and Article 26 on the right of persons with disabilities[76]. The Court also pointed out that this was consistent with the interpretation of the right to non-discrimination found in the European Convention on Human Rights, as well as the CRPD[77].

The Court did not, however, stop at this point. Instead, it departed from the statement that it had made in *Coleman* about Article 5 of the Employment Equality Directive being limited to persons with disabilities. It leant heavily on a purposive interpretation of the reasonable accommodation duty in the light of the CFR and the CRPD; indeed, it pointed out that neither of those instruments were in force when the decision in *Coleman* was issued[78]. On the one hand, the Court identified obligations in both instruments to uphold the best interests of children with disabilities[79]. Through this lens, it concluded that providing reasonable accommodation for carers is beneficial for the persons to whom they provide care. On the

[73] Waddington, 2011, *cit.*, p. 124.

[74] *Bervidi*, cit., para 54.

[75] Para 55. This was also in line with existing case-law on the prohibition of discrimination on grounds of racial or ethnic origin: Case C-83/14 *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia* EU:C:2015:480.

[76] Paras 57-58.

[77] Paras 60-64.

[78] Para 70.

[79] CFR, article 24(2), and CRPD, article 7(2).

other hand, the Court emphasised the broad nature of the duty to provide reasonable accommodation in the CRPD[80]. As discussed above, since *HK Danmark*, the Court has repeatedly drawn upon this aspect of the CRPD to favour an expansive reading of Article 5 of the Employment Equality Directive. In his Opinion, Advocate General Rantos drew attention to the interpretation of non-discrimination adopted by the UN Committee on the Rights of Persons with Disabilities (CmRPD)[81]. In General Comment No. 6, the Committee stated that "the obligations to prohibit all discrimination on the basis of disability includes persons with disabilities and their associates, e.g. parents of children with disabilities"[82]. Finally, the CJEU connected the concepts of indirect discrimination and reasonable accommodation. It argued that the prohibition of indirect discrimination by association would be "deprived of an important element of its effectiveness" if there was not an accompanying obligation to provide reasonable accommodation[83]. Again, this follows a pattern discussed in the previous section whereby the Court has integrated reasonable accommodation into the prohibition of discrimination.

Ultimately, the Court held that an employer is required:

"to make reasonable accommodation, within the meaning of Article 5 of that directive, in respect of an employee who does not himself or herself have a disability but who provides, to his or her child who has a disability, the assistance which enables that child to receive the primary care required by virtue of his or her condition, provided that that accommodation does not impose an unreasonable burden on that employer"[84].

There is no doubt that *Bervidi* represents a major extension of the concept of reasonable accommodation. Earlier academic literature had doubted that the Court could depart so radically from the literal wording of the Directive[85]. It is notable that the Court is careful to refer to a parent who is providing "the assistance which enables" his or her child "to receive the

[80] *Bervidi*, cit., paras 72 and 76.

[81] Case C-38/24 *Bervidi* EU:C:2025:184, Opinion of AG Rantos, para 38.

[82] CmPRD, "General Comment No. 6 (2018) on equality and non-discrimination" (2018) CRPD/C/GC/6, para 17.

[83] *Bervidi*, cit., para 74.

[84] Para 80.

[85] Ferri, Lawson, cit., p. 55; Lawson, *cit.*, p. 221.

primary care required"[86]. This approach can be welcomed insofar as it recognises that a working parent is very likely to be relying upon other sources of care, which might entail care that is tailored to the child's condition. This is subtly different to the expression used in *Coleman*, which referred to situations where care for the child "is provided primarily by that employee"[87]. It is also in keeping with the definition of carer in the Work-life Balance Directive, which refers to "providing personal care *or support*"[88].

The Court does not indicate whether others who provide assistance or care for persons with disabilities will fall within the scope of the reasonable accommodation duty. The referring court had asked whether "caregiver" could extend to "any person, whether a member of the family or a de facto cohabiting partner, who cares in a domestic setting"[89]. The CJEU held that this question was inadmissible because it was not clear how it linked to a case where the applicant was the mother of a child with a disability[90]. Nevertheless, it is evident that there are other types of caring relationship where a need for accommodation can arise. For example, demographic change draws attention to the situation of those who are caring for older relatives, often in circumstances where the older person has a disability. Notably, the Work-life Balance Directive includes caring for parents within its definition of "carer"[91]. The purposive nature of the reasoning of the CJEU in *Bervidi* supports the proposition that the duty to provide reasonable accommodation can be relied upon by carers of persons with disabilities, even beyond parents caring for children. In its judgment, the CJEU referred to point (x) in the preamble of the CRPD. This provides that "persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities". After quoting this provision, the Court stated that "it follows" that there was "an obligation, on the employer, to adapt the working conditions of that employee"[92]. This provides a pos-

[86] There is a different formula used in para 77, which refers to an employee who "cares for a child who has a disability".

[87] *Coleman*, cit., para 56.

[88] Directive 2019/1158, article 3(1)(d).

[89] *Bervidi*, cit., para 32.

[90] Para 85.

[91] Directive 2019/1158, article 3(1)(e).

[92] *Bervidi*, cit., para 73.

sible basis upon which to recognise a duty of reasonable accommodation for "family members" caring for persons with disabilities. At the same time, the very notion of discrimination "by association" implies that some degree of proximity is required in order to bring the person under the protective cloak of the law.

In summary, *Bervidi* is a consequential decision. 25 years after the EU legislature enacted a duty of reasonable accommodation for persons with disabilities, the Court extended this obligation to parents who provide assistance and care for their children with disabilities. In so doing, the Court recognised that adaptations to the working environment, including in relation to working time, could play a role in supporting the participation of carers within the labour market[93]. This represents a continuity with the social inclusion rationale that is reflected in its case-law on reasonable accommodation for persons with disabilities. It is notable, however, that *Bervidi* relied on the prohibition of indirect discrimination combined with the duty to provide reasonable accommodation for persons with disabilities. This makes it less clear whether the Court would impose a duty to adjust working conditions in circumstances without any connection to disability, such as parents caring for children without disabilities. Such cases would have to rely entirely on the prohibition of indirect discrimination. As discussed in the next section, the Court has proven to be less receptive to this argument in the context of religious belief and practice.

4. *Between Ambivalence and Antagonism: Workplace Accommodations and Persons with Religious Beliefs and Practices*

Sections 2 and 3 of this article have demonstrated the expansive interpretation of reasonable accommodation in the CJEU case-law that pertains to disability. This section turns to examine workplace accommodations in relation to religious diversity. The fundamental right to freedom of religion encompasses the right to manifest religious beliefs. In EU law, this is enshrined in Article 10(1) CFR, which includes the right "either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance". It is well-established

[93] Para 77.

that the exercise of religious freedom may, under certain circumstances, give rise to a need for accommodation in the sense of being granted an exemption from generally applicable rules[94]. This occurs across a wide spectrum of law and policy; for example, the CJEU has decided several cases concerning legislative exemptions from animal welfare requirements in order to accommodate religious rites[95]. In the context of this article, it is most relevant to concentrate upon accommodation requests that arise in the course of employment[96]. These vary, but common issues that arise concern freedom to wear religious symbols, to have time off for religious observance, and where employees have a conscientious objection to certain activities.[97]. In the CJEU case-law, the issue that has predominated has been workplace dress-codes that prohibit the wearing of visible signs of religious, political or philosophical beliefs. This has given rise to a series of cases that all concern Muslim employees who wished to wear an Islamic headscarf, but who were not permitted to do so. There is a substantial body of academic literature on the variety of legal issues found in these cases[98]. For the purposes of this article, it is sufficient to focus only on the Court's view as to whether the Employment Equality Directive should be interpreted in a manner that would, in effect, require an employer to accommodate those employees who wished to wear religious symbols.

[94] Raza, *Religious Accommodation and its Limits*, Hart Publishing, 2024, p. 53.

[95] See further, Granet, *"As I Have Commanded Thee": Flemish Decrees and CJEU Jurisprudence Put Religious Slaughter Under the Knife*, in *ELR*, 2021, p. 380.

[96] For an overview, see Vickers, *Religious Freedom, Religious Discrimination and the Workplace*, 2nd edn., Hart Publishing, 2016; Alidadi, *Religion, Equality and Employment in Europe: The Case for Reasonable Accommodation*, Hart Publishing, 2017; Scarponi, *Gli "accomodamenti ragionevoli" in materia religiosa nell'evoluzione giurisprudenziale delle alte corti. Linee guida di tendenza e interrogativi aperti*, in *Diritto del lavoro OPEN Labour Law*, 2025, p. 142.

[97] Ringelheim, *Religion, Diversity and the Workplace: What Role for Law?*, in Alidadi, Foblets, Vrielink (Eds.), *A Test of Faith? Religious Diversity and Accommodation in the European Workplace*, Ashgate, 2012, p. 338.

[98] See, *inter alia*, Howard, 2019, *cit.,* p. 150; Raza, *cit.,* pp. 37 and 86; Van Den Brink, *The Protected Grounds of Religion and Belief: Lessons for EU Non-Discrimination Law*, in *GLJ*, 2023, p. 855; Spitaleri, *Religious Freedom and Employment Discrimination in the Case Law of the European Court of Justice,* in Paladini, Del Ángel Iglesias Vásquez (Eds.), *Protection and Promotion of Freedom of Religions and Beliefs in the European Context*, Springer, 2023, p. 215; Vickers, *"Nothing but Trouble", or Reasoned Inconsistency? The Development of Religion and Belief Protection since 2000*, in *IJDL*, 2025, p. 414; Mulder, *The Dialogue Between the Courts Revisited: An Analysis of National Preliminary References and Their Impact on Advancing CJEU Case Law on Religious Discrimination*, in *LLR*, 2025, p. 183.

The Court's first consideration of this issue was in the 2017 *Achbita* case[99]. This concerned a Muslim employee who informed her employer, G4S, that she would begin wearing an Islamic headscarf at work. Her employer responded that its "position of neutrality" meant that employees were not permitted to wear visible signs of religious, philosophical or political beliefs in the workplace[100]. Ultimately, she was dismissed because she would not comply with this policy. The CJEU rejected the argument that this constituted direct discrimination; instead, it recognised that the employer's requirement that employees "dress neutrally" might give rise to indirect discrimination if it placed employees of a particular religion or belief at a particular disadvantage[101]. With regard to objective justification, the Court accepted that "the desire to display, in relations with both public and private sector customers, a policy of political, philosophical or religious neutrality must be considered legitimate".[102]. The Court also held that prohibiting employees from wearing visible signs of political, philosophical or religious beliefs was an appropriate way of pursuing this aim, so long as it was applied "in a consistent and systematic manner"[103]. Consequently, the crux of the case was whether the prohibition of wearing visible signs was *necessary* to achieve the legitimate aim of displaying neutrality. The test of necessity asks whether less restrictive measures could have been sufficient to achieve the intended aim. This can also be described as application of the principle of proportionality[104].

Exploring whether the employer's requirement was proportionate opens the door to considering if adjustments could have been made that would have sufficiently attained the company's objective, while reducing the obstacles that this created for employees of a particular religion or belief. The nature of such an inquiry is quite similar to the type of questions that arise under the duty to provide reasonable accommodation. Indeed, this connection was identified in the legal proceedings prior to the Court's

[99] Case C-157/15 *Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV* EU:C:2017:203.

[100] Para 13.

[101] Paras 30 and 34.

[102] Para 37.

[103] Para 40.

[104] Case C-417/23 *Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge v MV and others* EU:C:2025:1017, para 144.

judgment. The European Commission argued that the company could have provided the option for employees of wearing a headscarf in a "matching colour and style" to the workplace uniform[105]. Alternatively, Advocate General Kokott identified the possibility of transferring the employee to a "back-office" position that did not involve direct contact with customers[106]. She pointed out, however, that the Directive only provided for reasonable accommodation in respect of persons with disabilities. Accordingly, while employers were free to explore "individual solutions tailored to the circumstances involved, one should not impose a particularly significant organisational burden on them"[107].

In contrast, Advocate General Sharpston argued that reasonable accommodation was an appropriate way of handling these issues. Her opinion was issued in the parallel *Bougnaoui* case, which also concerned a Muslim employee dismissed for wearing an Islamic headscarf[108]. On the question of whether it was proportionate for an employer to prohibit the wearing of visible signs of religious belief in pursuit of a policy of neutrality, Advocate General Sharpston drew attention to the need to balance the different rights and interests at stake: "the employer and employee will need to explore the options together in order to arrive at a solution that accommodates both the employee's right to manifest his religious belief and the employer's right to conduct his business"[109]. In an echo of the test for disability accommodation, Advocate General Sharpston accepted that it would be relevant to take into account any costs that arose in the process of making an adjustment: "an employer in a large undertaking can be expected to take greater steps to make a reasonable accommodation with his workforce than an employer in a small- or medium-sized one"[110].

[105] Case C-157/15 *Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV* EU:C:2016:382, Opinion of AG Kokott, para 105.

[106] Para 108.

[107] Para 110.

[108] The factual scenario in *Bougnaoui* was, however, different in nature to that of *Achbita*, because the employer acted in response to a complaint from a specific client. This led the Court to focus its judgment in that case on the possibility of direct discrimination and the exceptions thereto: Case C-188/15 *Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA* EU:C:2017:204.

[109] Case C-188/15 *Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA* EU:C:2016:553, Opinion of AG Sharpston, para 128.

[110] Para 125.

In *Achbita*, the position adopted by the CJEU was closer to that proposed by Advocate General Kokott. On the one hand, it did not endorse an interpretation of the necessity test as giving rise to an obligation on the employer to search for an accommodation with the employee. On the other hand, its advice to the referring court indicated that some consideration should be given to the options available to the employer prior to the decision to dismiss the employee:

"it is for the referring court to ascertain whether, taking into account the inherent constraints to which the undertaking is subject, and without G4S being required to take on an additional burden, it would have been possible for G4S, faced with such a refusal, to offer her a post not involving any visual contact with those customers, instead of dismissing her. It is for the referring court, having regard to all the material in the file, to take into account the interests involved in the case and to limit the restrictions on the freedoms concerned to what is strictly necessary"[111].

This paragraph is framed in tentative language that conferred ample discretion on the referring court[112]. The implication is that the employer should have offered the employee the alternative of working in a role with no face-to-face customer contact, but only if making this offer would have imposed no "additional burden" on the employer. This is far removed from the duty of reasonable accommodation for persons with disabilities. That requires a wide-ranging search for any "appropriate measures" to remove the barrier. While the CJEU identifies a measure that could be taken in this situation (reassignment to different role in the organisation), it can be questioned whether the nature of the proposed adjustment can be reconciled with the values that underpin anti-discrimination legislation[113]. The Employment Equality Directive invokes "the need to foster a labour market favourable to social integration"[114]. Yet the Court implies that it would be appropriate for a company to transfer Muslim women who wear an Islamic headscarf to roles where

[111] *Achbita*, cit., para 43.

[112] Ultimately, the Labour Court of Ghent concluded that there was no indirect discrimination in this case: Van Drooghenbroeck, *Country Report Non-discrimination: Transposition and Implementation at National Level of Council Directives 2000/43 and 2000/78. Belgium*, Publications Office of the European Union, 2025, p. 64.

[113] Xenidis, *The Polysemy of Anti-Discrimination Law: The Interpretation Architecture of the Framework Employment Directive at the Court of Justice*, in *CMLR*, 2021, p. 1690.

[114] Directive 2000/78, recital 8. See also, Ringelheim, 2012, *cit.,* p. 352.

customers would not meet them in person. It is very difficult to reconcile this approach with the Directive's aim of social integration[115].

In the cases since *Achbita*, it is notable that the CJEU has not revisited the possibility of reassigning workers to back-office positions[116]. On the contrary, its decision in *Comune d'Ans* indicates that an employer may justify prohibiting the wearing of religious symbols even in respect of employees without customer-facing roles. That case concerned an employee of a municipality who was responsible for handling public contracts. This role was primarily back-office in nature[117]. In response to a request from the applicant to be permitted to wear a headscarf at work, the municipal board amended the terms of employment to enshrine a policy of "exclusive neutrality" that applied to all employees, irrespective of whether their roles involved engagement with the public[118]. The CJEU held that Member States, including lower tiers of government, "must be afforded a margin of discretion in designing the neutrality of the public service"[119]. It accepted that the municipality was acting in pursuit of a legitimate aim:

"an entirely neutral administrative environment can be effectively pursued only if no visible manifestation of beliefs – philosophical or religious in particular – is allowed when employees are in contact with users of the public service or with other employees, since the wearing of any sign, even a small-sized one, undermines the ability of that measure to achieve the aim allegedly pursued and therefore calls into question the consistency of that policy"[120].

[115] Xenidis, cit., p. 1690; Sharpston, *Shadow Opinion of Former Advocate-General Sharpston: Headscarves at Work (Cases C-804/18 and C-341/19)*, in *EU Law Analysis*, 2021, para 243, https://eulawanalysis.blogspot.com/2021/03/shadow-opinion-of-former-advocate.html, accessed 21 July 2026; Howard, *Religious Discrimination at the CJEU and the Social Inclusion Approach*, in *ELLJ*, 2024, p. 719.

[116] Cases C-804/18 and C-341/19 *IX v WABE eV and MH Müller Handels GmbH v MJ* EU:C:2021:594; Case C-344/20 *LF v SCRL* EU:C:2022:774; Case C-148/22 *OP v Commune d'Ans* EU:C:2023:924. See further, Mulder, *Religious Neutrality Policies at the Workplace: Tangling the Concept of Direct and Indirect Religious Discrimination. WABE and Muller*, in *CMLRev*, 2022, p. 1501; Howard, *OP v Commune d'Ans: Another Step in the Wrong Direction for Headscarf-Wearing Women*, in *ILJ*, 2024, p. 305.

[117] *Commune d'Ans*, cit., para 12.

[118] Para 15.

[119] Para 33.

[120] Para 39. It is notable that, notwithstanding the CJEU judgment in *Commune d'Ans*, the Liège Labour Court subsequently held that the actions of the municipality constituted

There is a difference between *Achbita* and *Commune d'Ans* because the former concerned a private sector employer and the latter involved the public sector. It is not entirely clear whether the Court would accept that a private sector employer is also entitled to prohibit wearing religious symbols amongst back-office staff because of the desire to create an "entirely neutral" environment.

The CJEU case-law could be read as being antagonistic towards workplace accommodation of religious employees. There are, though, points in these cases where the Court acknowledges that the right to manifest one's religious beliefs should be accorded some weight in workplace decision-making. In *WABE* and *Müller Handels*, the Court identified a variety of provisions of the CFR that were engaged, including freedom of religion and freedom of business[121]. It stated that "the assessment of observance of the principle of proportionality must be carried out in accordance with the need to reconcile the requirements of the protection of those various rights and principles at issue, striking a fair balance between them"[122]. This balancing act was, though, a task left to national authorities:

"in Directive 2000/78, the EU legislature did not itself effect the necessary reconciliation between the freedom of thought, conscience and religion and the legitimate aims that may be invoked in order to justify unequal treatment, for the purposes of Article 2(2)(b)(i) of that directive [on indirect discrimination], but left it to the Member States and their courts to achieve that reconciliation"[123].

The deference of the CJEU towards national decision-making in this arena means that Member States have options: they may permit employers to enforce "neutrality" policies[124], but they may also opt to provide stronger protection of freedom of religion via national law[125].

Whether one agrees or disagrees with the Court's case-law on religious symbols in the workplace, it is evident that its approach to the interpretation

indirect discrimination on grounds of religion and that the complete prohibition on wearing religious symbols was not objectively justified: Van Drooghenbroeck, *cit.*, p. 67.

[121] *WABE and Müller Handels*, cit., para 84.

[122] Para 84.

[123] Para 87.

[124] It is, though, necessary that such policies operate in accordance with criteria laid down by the CJEU; e.g., they must be applied in a "consistent and systematic manner": *WABE and Müller Handels*, cit., para 70.

[125] *WABE and Müller Handels*, cit., para 89.

of the Employment Equality Directive is markedly different in this context when compared to the case-law on disability accommodation discussed in sections 2 and 3[126]. There are few traces of the expansive approach to interpretation when one looks at the case-law on religious symbols. Instead, it is characterised by caution and deference to national authorities. While the Court recognises that the cases engage the protection of fundamental rights, it places emphasis on the competing rights at stake. The case-law strives to balance the right to manifest religious beliefs with Article 16 CFR on the freedom of business. In a vivid contrast, the Court has never invoked Article 16 CFR as a counterbalance to the right to reasonable accommodation for persons with disabilities. The final section of this article reflects upon the possible explanations for the divergent pathways of the case-law on workplace accommodations.

5. *Conclusions*

This article set out to identify the trajectories in the CJEU's case-law on workplace accommodations. Although accommodations are potentially relevant to each of the protected characteristics found in EU anti-discrimination law, the existing body of case-law has primarily explored this issue in relation to disability, caring responsibilities and religious practices. This article has established that there are differences in the approach of the CJEU to workplace accommodations in respect of each of these characteristics. Its case-law on reasonable accommodation for persons with disabilities has been largely ambitious and expansive. In respect of persons with caring responsibilities, the Court's case-law was initially cautious, but a turning point was reached in its 2025 *Bervidi* decision. This created a duty to provide reasonable accommodation for carers of persons with disabilities. The exact parameters of this duty remain to be explored, and the decision does not determine whether equivalent duties might arise for other carers (e.g. parents of young children). Nevertheless, this was a bold judgment that significantly extended the law. In contrast, the Court's stance on the accommodation of religious diversity in the workplace might be described as ambivalent (at best). It is true that the Court has acknowledged the need for a

[126] Vickers, *"Nothing but Trouble"*, cit., p. 425.

fair balance of all the competing rights and interests presented by such cases. Yet the scales appear to be tilted firmly in favour of the freedom of employers to stifle expression of religious identity in the pursuit of "neutrality". The Court's case-law does not prevent individual employers or individual Member States from being more generous in their protection of religious freedom in the workplace, but an employee seeking accommodation of their religious practices is unlikely to find a remedy in EU law at present.

On one level, there is a straightforward explanation of the different trajectories in the case-law: they reflect the content of the legislation that the Court is interpreting. The EU legislator chose to establish a duty of reasonable accommodation for persons with disabilities; it did not create any parallel obligation for other protected characteristics. The CJEU is, therefore, on solid ground when it is cautious about reading an accommodation duty into other provisions of anti-discrimination legislation. Yet the bare text of the legislation does not fully explain the Court's appetite for expanding the disability accommodation duty. Requiring employers to consider reassigning workers with disabilities to different jobs and extending the accommodation duty to carers of persons with disabilities are both instances where the Court's decisions sit uneasily with a literal reading of the Directive's provisions. Of course, it is well-known that the Court's interpretative methods are not based on the mere words of the text; instead, they draw heavily on the underpinning purpose of the law. The Union's ratification of the CRPD has provided a mandate for the Court to interpret expansively the reasonable accommodation duty. Notably, Article 27 CRPD establishes the objective of "a labour market and work environment that is open, inclusive and accessible to persons with disabilities".

Turning to the accommodation of religious diversity, this centres on the concept of indirect discrimination. The stance taken by the Court in the case-law on wearing religious symbols was not the only possible interpretation that it could have adopted. The Opinion of Advocate General Sharpston in *Bougnaoui* presented a coherent argument for interpreting the justification test for indirect discrimination in a manner that imposed some obligation on the employer to accommodate the employee's religious practices. The Court consciously chose to read the legislation in a more restrictive fashion[127]. In seeking to explain this choice, it seems credible that

[127] Howard, *Islamic Headscarves and the CJEU: Achbita and Bougnaoui*, in *MJECL*, 2017, p. 365.

this was influenced by the lack of consensus amongst the Member States in respect of managing religious diversity[128]. This is transparent in the Court's reasoning in *WABE* and *Müller Handels* where it expressed the view that the Employment Equality Directive:

"establishes a general framework for equal treatment in employment and occupation, which leaves a margin of discretion to the Member States, taking into account the diversity of their approaches as regards the place accorded to religion and beliefs within their respective systems"[129].

Yet deference to national diversity does not provide a complete account of the Court's reticence in this area. It is notable that other strands of its case-law on religious discrimination have not adopted this approach[130]. The Employment Equality Directive also contains an exception from the prohibition of discrimination in respect of differences of treatment by organisations with an ethos based on religion or belief.[131] Without entering into the details of the case-law on that topic, it can be observed that the Court has been rigorous in applying this provision and it has resisted arguments that it should respect the diversity of national legal traditions in that sphere[132].

Bearing this in mind, it can be postulated that there is a latent scepticism in the case-law about the concept of workplace accommodation of religious diversity. Arguably, this belies the Court's position on the legitimacy of neutrality policies. It has readily accepted the proposition that a company acts appropriately when it prohibits religious expression as a way of preserving an image of neutrality. The Court has not sought to probe the meaning of neutrality or the objectives that it seeks to attain. For example,

[128] McCrea, *Article 10,* in Peers, Hervey, Kenner, Ward (Eds.), *The EU Charter of Fundamental Rights: A Commentary* 2nd edn, Hart Publishing, 2021, p. 331; Ringelheim, *Headscarf Bans in the Public Workplace before the Court of Justice: OP v. Commune d'Ans or the Art of Ambiguity*, in *ELLJ*, 2024, p. 923.

[129] *WABE* and *Müller Handels*, *cit.,* para 86. See also the explanation of the Court's decision in *Commune d'Ans* by the President of the CJEU: Irish Centre for European Law, *Review of the CJEU in 2023*, 23 February 2024, https://www.youtube.com/watch?v=kf1wexkRRkE, accessed 21 July 2026.

[130] Ringelheim, 2024, *cit.*, p. 921; Sharpston, *cit.*, para 260; Vickers, *"Nothing but Trouble"*, cit., p. 424.

[131] Directive 2000/78, article 4(2).

[132] See further, van den Brink, *When Can Religious Employers Discriminate? The Scope of the Religious Ethos Exemption in EU Law*, in *European Law Open*, 2022, p. 89; Unruh, *Is German Religionsverfassungsrecht under Threat from the European Union?*, in *OJLR*, 2020, p. 1.

Ringelheim posits that neutrality could be interpreted as relating to *actions*: employees act neutrally when they treat all co-workers and third parties in the same manner irrespective of religion or belief. Instead, she points out that the Court has endorsed the much broader notion that neutrality is about *appearance*[133]. Ultimately, the CJEU's favourable disposition towards neutrality policies clashes with the basic premise of accommodating of religious diversity. The wide reading of neutrality conveys a secular norm where religious identity is left "at the door" when you go to work[134]. In contrast, an accommodationist approach embraces a pluralistic perspective that affords space for the inclusion of religion in public life[135].

This article has shown that the CJEU has adopted a different approach when faced with accommodation requests connected to disability and religion. Looking ahead, the implications of this for accommodation requests connected to other protected characteristics is less clear. As indicated in section 3, this is mostly likely to arise before the Court in the context of caring responsibilities. The Work-life Balance Directive has enacted a procedural right for parents of young children and carers to request flexible working arrangements for caring purposes. This "right to request" appears to preserve managerial discretion as to whether to accede to such requests[136]. It is easy to imagine that an employee whose request is denied by their employer might explore whether the failure to provide a workplace accommodation breaches other provisions of EU law. For instance, if a woman caring for a young child is refused permission to reduce her working hours, could this be indirect discrimination on grounds of sex? The existing body of case-law makes it difficult to anticipate the approach that the Court will take. It could build on its decision in *Bervidi* to shift in this direction or alternatively it could emphasise that reasonable accommodation is a disability-specific concept. What seems to be evident is that the direction that the Court takes cannot be explained purely by the wording of the legislation. Rather, it is strongly influenced by its understanding of the context and purpose of the law. This means that the hesitancy around religious accommodation may not necessarily be replicated in respect of other protected characteristics.

[133] Ringelheim, *cit.*, p. 918.

[134] *Achbita*, Opinion of AG Kokott, *cit.*, para 116.

[135] Raza, *cit.*, p. 44.

[136] Recital 36 of Directive 2019/1158 states "the employer should be able to decide whether to accept or refuse a worker's request for flexible working arrangements".

Abstract

The way in which work is organised can pose obstacles to participation because of workers' diverse personal characteristics. This is well-known in relation to persons with disabilities, but it can affect a wider range of workers, such as persons with caring responsibilities or persons with religious beliefs and practices. Providing "accommodations" in the workplace can entail adjustments to operational practices and policies, while keeping a balance with business requirements. This article explores how claims for workplace accommodations have been handled by the Court of Justice of the European Union in its interpretation of anti-discrimination legislation. It identifies divergent trajectories in the case-law on accommodation for persons with disabilities, persons with caring responsibilities, and persons with religious beliefs and practices. In part, this can be explained by choices made by the legislature. Yet the case-law also reveals the Court's understanding of the purpose of the law.

Keywords

Reasonable accommodation, Disability, Carers, Religion, EU law.