



## The FADA's research at a glance:

# Reasonable adjustment as a discrimination dimension in law. Human rights requirements for the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*).

## Factsheet on the legal opinion

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Reasonable adjustment schemes serve to prevent the discrimination against persons with disabilities. The UN Convention on the Rights of Persons with Disabilities and European law oblige the countries, their legal systems, societies, public institutions and private entities to put these arrangements into place. This obligation demonstrates that the non-discrimination of persons with disabilities is not limited to negative obligations to refrain, but establishes concrete obligations to act.

While the German law does not know reasonable accommodation as a legal concept in its own right, individual provisions in the General Equal Treatment Act (AGG) and Books V and IX of the Social Code (SGB<sup>°</sup>V and IX) include obligations in the realms of health care, work, education and other forms of social participation that combine to secure reasonable accommodation for persons with disabilities.

As a matter of fact, the German term "*angemessene Vorkehrungen*" is based on the equality law in Anglo-Saxon countries. Introduced in the USA in the early 1970s as "reasonable accommodation", it is known as "reasonable adjustment" in the United Kingdom. Whatever the term used, both legal systems share the definition of the measures required under equality law to compensate for a person's disadvantage in the world of work on the grounds of their disability or faith.

The concept follows from the aim and purpose of equality law which is to secure all persons with a disability their autonomous and full social participation on an equal basis with others, and specifically, to overcome the previously prevalent exclusion from the social space of persons with disabilities and their marginalisation in special places such as homes, workshops or remedial schools. Specifically, these efforts aim to achieve their inclusion. Inclusion is based on the philosophy that disability is a manifestation of the human condition and merits protection for the sake of diversity.

The concept of disability is abstract and dynamic: abstract because it is defined by societal conditions and dynamic because illnesses can progress to disabilities and, conversely, the advances of medicine and technology have the potential to remove social disadvantages on grounds of physical, psychological and sensory impairments.

Reasonable accommodation is the measures taken in response to a single specific disability to effectively ensure the person's social participation. This term depends on three sets of circumstances, specifically, the society in which a person with a disability lives, their concrete circumstances of life, and finally, the conditions under which they can participate in the concrete society.

The duty of private individuals, in particular, to provide for reasonable accommodation to protect other private individuals with a disability is restricted by the limit of sacrifice. However, this duty does apply if private individuals receive public funds to pay for the arrangements put in place. The limit of sacrifice is a free-standing cap on the duty to provide for reasonable accommodation; it cannot be derived from the progressive achievement clause (Art. 4 UN CRPD), although it shares the same basic concept.

The prohibition of discrimination on grounds of a disability and the duty to provide for reasonable accommodation are also acknowledged in Art 5 Council Directive 2000/78/EC. German law must satisfy these requirements. EU law must be construed in line with the CRPD. To this end, the ECJ has made extensive specifications. These requirements are in line with Art. 1, 21 and 29 EUCFR and the human rights established in Art. 2, 3, 5, 14 ECHR that have been spelled out in greater detail in the case law of the ECHR. This case law is binding not only on the EU countries, but all MS of the Council of Europe.

As far as the German law is concerned, the constitution prohibits the discrimination on grounds of disability (Art. 3 III 2 Basic Law). This obligation applies not only in the relations between the individual and the State, but also has a "third party effect" - i.e. it also applies between private persons. The UN Convention on the Rights of Persons with Disabilities is a part of national law and, as such, has immediate legal effect. While this must be stipulated in concrete detail by the parties to the Convention, all concrete specifications must be measured against the UN Convention which is why they must be directly observed when interpreting German law.

German law does not know the concept of reasonable accommodation: It strives to fully satisfy the UN Convention. However, it still falls short of its requirements, since the protection of persons with a disability remains limited to "severely disabled persons" and special housing, work and education facilities continue to exist. Ultimately, the healthcare for persons with disabilities is not sufficient to afford them full social participation.

While the concept of "reasonable accommodation" stems from the law on the equal treatment of persons with a disability, it may not be confined to it. It provides an adequate explanation to define the obligations to act that are necessary to protect persons from discrimination on grounds of sex, faith or age. In this realm, it fulfils the same purpose, which is to define the terms and conditions required for the social participation of persons potentially facing discrimination and to substantiate specific imperatives to act.

Consequently, "reasonable accommodation" is a fundamental concept of the general equal treatment law. Therefore, it should also be incorporated as a fundamental concept into the General Equal Treatment Act (AGG) and, implicitly, secure every person protected under section 1 AGG the legal entitlement to reasonable accommodation.

The proposed wording reads: "Every person protected under section 1 AGG shall have a legal entitlement to reasonable accommodation. This term means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms."

## More information

The legal opinion can be downloaded [here](#), available only in German language.

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