

## Ruling

Article 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the concept of ‘reasonable accommodation’ for disabled persons, within the meaning of that article requires that a worker, including someone undertaking a traineeship following his or her recruitment, who, owing to his or her disability, has been declared incapable of performing the essential functions of the post that he or she occupies, be assigned to another position for which he or she has the necessary competence, capability and availability, unless that measure imposes a disproportionate burden on the employer.

## ECJ 10 February 2022, case C-219/20 (Bezirkshauptmannschaft Hartberg-Fürstenfeld), Posting of Workers and Expatriates

LM – v – Bezirkshauptmannschaft Hartberg-Fürstenfeld, Austrian case

### Summary

Member States are allowed to impose sanctions on foreign service providers for breaches of the Posting of Workers Directive (96/71/EC) even after five years.

### Question

Must Article 5 of Directive 96/71, read in conjunction with Article 47 of the Charter and in the light of the general principle of EU law relating to the right to good administration, be interpreted as precluding national legislation providing for a five-year limitation period for failure to comply with obligations relating to the remuneration of posted workers?

### Ruling

Article 5 of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the pro-

vision of services, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union and in the light of the general principle of EU law relating to the right to good administration, must be interpreted as not precluding national legislation providing for a five-year limitation period for failure to comply with obligations relating to the remuneration of posted workers.

## ECtHR 17 February 2022, app. no. 46586/14 (D’Amico v. Italy), Pension

Ms Immacolata Filomena D’Amico – v – Italian Government, Italian case

### Summary

No sufficiently compelling reason justifying retrospective application of a law determining the substance of pensions disputes in pending proceedings. The ECJ’s press release is available here: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7262572-9889223&filename=Judgments%20and%20decisions%20of%2017.02.2022.pdf>.

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### Ruling

The Court, unanimously:

- Dismisses the Government’s objection that the applicant did not suffer a significant disadvantage;
- Joins to the merits the Government’s objection that the application is manifestly ill-founded and dismisses it;
- Declares the application admissible;
- Holds that there has been a violation of Article 6 § 1 of the Convention;
- Holds
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts at the rate applicable at the date of settlement:
    - (i) EUR 9,700 (nine thousand seven hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
    - (ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest

shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

- Dismisses the remainder of the applicant's claim for just satisfaction.
- Done in English, and notified in writing on 17 February 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

## ECJ 24 February 2022, case C-262/20 (Glavna direktsia „Pozharna bezopasnost i zashtita na naselenieto”), Working Time

VB – v – Glavna direktsia „Pozharna bezopasnost i zashtita na naselenieto”, Bulgarian case

### Summary

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It is not compulsory for the normal length of night work for firefighters to be shorter than the normal length of day work. It is allowed to provide for a maximum length of night work of 7 hours only for workers in the private sector and not for public-sector workers. Unfortunately, no English translation of the case is available yet. Other translations are available on: <https://curia.europa.eu>.

## ECJ 24 February 2022, case C-283/20 (EULEX-KOSOVO), Miscellaneous

CO and Others – v – MJ, European Commission, European External Action Service (EEAS), Council of the European Union and Eulex Kosovo, EU case

### Summary

Eulex Kosovo qualifies as employer and therefore as defendant in any action regarding the mission in Kosovo.

### Question

Must Article 8(3) and (5), Article 9(3) and Article 10(3) of Joint Action 2008/124 and Article 16(5) of Joint Action 2008/124, as amended be interpreted as meaning that they designate, as employer of the staff of Eulex Kosovo for the period before 12 June 2014, the Head of Mission, acting personally and on his or her own behalf, and/or the Commission, the EEAS, the Council or any other entity?

### Ruling

Article 16(5) of Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, Eulex Kosovo, as amended by Council Decision 2014/349/CFSP of 12 June 2014, must be interpreted as meaning that, starting from 15 June 2014, it designates the Rule of Law Mission in Kosovo, known as ‘Eulex Kosovo’, referred to in Article 1 of that joint action, as responsible and therefore as defendant in any action relating to the consequences of the implementation of the mission entrusted to it, irrespective of whether the facts underlying such an action occurred before 12 June 2014, the date when Decision 2014/349 entered into force.

## ECJ 24 February 2022, case C-389/20 (TGSS (domestic worker unemployment)), Gender Discrimination, Social Insurance

CJ – v – Tesorería General de la Seguridad Social (TGSS), Spanish case

### Summary

Legislation excluding domestic workers from unemployment benefits found indirectly discriminatory. Unfortunately, no English translation of the case is available yet, but the ECJ's summary of the case (in English) is available on <https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-02/cp220037en.pdf>.