
| RESEARCH ARTICLE

Invisible Disability Discrimination in Comparative Law: An Assessment of Mrs J Williams V Newport City Council (2023) EAT 136 in United Kingdom Labour Law

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| ABSTRACT

Disability is defined as a deficiency in an individual's physical, mental, or sensory abilities, whether congenital or acquired. Disability can be temporary or permanent. Some health conditions of individuals with disabilities are visible and predictable. Orthopedic disabilities, limb loss, or postural and movement disorders are examples of such visible disabilities. Apart from these noticeable and recognizable disabilities, the existence of invisible (hidden) disabilities is also acknowledged. These types of disabilities are referred to as "invisible" because the health condition is not easily detectable, and in some cases, the individual may not even be aware of their disability due to the nature of their health condition. In the workplace disability-including invisible disability-can be a ground for discrimination. Individuals with disabilities, particularly those with invisible disabilities, may face discrimination in job applications, performance evaluations during employment, or even at the termination of employment, due to the lack of reasonable accommodations. The subject of this study is the decision in the case of Mrs. J Williams v Newport City Council: [2023] EAT 136 and its evaluation within the scope of disability, invisible disability, and discrimination in UK employment law, as well as a comparison with Turkish employment law.

| KEYWORDS

Disability, Invisible Disability, Hidden Disability, Discrimination, Reasonable Accommodation

| ARTICLE INFORMATION

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1.Introduction

The fundamental rights and freedoms and personal values of workers, who spend a significant part of their lives working, are protected in international conventions and regional texts in modern legal systems. Despite all legal regulations protecting workers, workers' privacy, personal data, honor and dignity are still violated in working life, they may be paid less than their peers, their jobs may be unfairly terminated, and they may be subjected to discrimination. The subject of this study is the discrimination that disabled people, who are a disadvantaged group - invisible disabled people, are subjected to in working life, which is an obstacle to living a life worthy of human dignity. According to the World Health Organization, disability refers to the health problems that people have from a medical point of view, while from a social point of view it refers to the obstacles caused by society. The problem of access to physical spaces, deprivation of technological products, and prejudice in society can be a bigger obstacle than the health problems of disabled people. Therefore, disabled people are likely to experience more economic and social problems than others. The need for a stronger model for persons with disabilities has necessitated the inclusion of disability within the scope of human rights.

While being disabled requires a struggle in itself, invisible disabilities should not be ignored in social and working life. The World Disability Report recognizes invisible disability as a type of disability. Anxiety, learning disabilities (dyslexia), fibromyalgia, diabetes, pulmonary hypertension and scleroderma and similar health problems are some of the invisible disabilities. Seemingly healthy individuals may find it difficult to prove their disability in the public sphere and in the workplace. While it is possible to understand

that a person walking with crutches has a temporary or permanent disability, it is not possible to treat invisible disabilities in the same way. This situation may cause invisible persons with disabilities to be more exposed to prejudice, discrimination and other unfair treatment in social and working life. Examples of discrimination against people with invisible disabilities include a senior policeman not being successful in a written exam due to dyslexia, a social worker being subjected to severe criticism and verbal attacks while performing her duties, and being dismissed from her job due to mental problems arising from the fear of experiencing the same events again.

In this study, *Mrs J Williams v Newport City Council*: [2023] EAT 136 case, it is aimed to evaluate the decision given in the case of disability - invisible disability and discrimination by comparing the UK Labor Law and Turkish Labor Law, and to raise awareness in Turkey on invisible disability.

2. Invisible Disability in Labor Law

2.1. The Concept of Invisible Disability Discrimination

“Invisible disability,” recognized by the World Health Organization as a type of disability, has been accepted in many countries, including the United Kingdom, the United States, Canada, and others. The UK Parliament's Inquiry into Invisible Barriers to Education and Employment defined “invisible disability.” According to this definition, invisible disability is defined as “a disability or health condition that is not immediately apparent.”¹ Although there is no legal definition of invisible disability in Turkey, the 2010 Study on the Measurement of Discrimination Based on Disability distinguished between visible disability and invisible disability.² Under the umbrella term invisible disability, there are physical, mental, or neurological health issues that affect a person's ability to perform normal daily activities.³ These disabilities include: 1. Anxiety, depression, schizophrenia, personality disorders, obsessive-compulsive disorder, etc.; 2. Dementia, traumatic brain injury, learning disabilities (dyslexia), attention deficit hyperactivity disorder (ADHD), etc.; 3. Autism, Asperger syndrome; 4. Visual impairments, limited vision, hearing loss; 5. Diabetes, chronic pain, autoimmune diseases, etc.⁴

The fact that one in five people in the United Kingdom has a disability, and that 80% of these disabilities are invisible, highlights the importance of this issue.⁵ The fact that one in five people in the United Kingdom has a disability, and that 80% of these disabilities are invisible, highlights the importance of this issue. In Turkey, according to the 2010 Survey on the Measurement of Discrimination Based on Disability, the percentage of individuals with invisible disabilities is 53%, while those with visible disabilities account for 45.9%.⁶ By its nature, invisible disability refers to health impairments that cannot be understood by others but can be identified by healthcare professionals. As a result, individuals with invisible disabilities may be misunderstood or face prejudice in social settings due to the invisibility of their health issues.⁷

According to the 2021 National Disability Survey, the main problems faced by people with invisible disabilities include indifference, disrespect, lack of understanding, and similar patterns of social discrimination. According to the survey conducted for the study, 85% of the population demonstrates a lack of understanding toward invisible disabilities, while 65% of the population indicates

¹Rebecca Kelly and Natasha Mutebi, *Invisible Disabilities in Education and Employment* (UK Parliament POST 2023)

²2010 Study on the Measurement of Discrimination Based on Disability <<https://www.aile.gov.tr/media/5597/ozurluluge-dayali-ayrimciligin-olculmesi-arastirmasi.pdf>> Accessed on 30.01.2024

³For the website of the Invisible Disabilities Association, see <<https://invisibledisabilities.org/>>. Accessed on January 29, 2024. The criteria identified by the association for determining invisible disabilities include debilitating conditions, fatigue, pain, cognitive impairments, mental disorders, hearing and vision impairments, and similar conditions. The association does not provide a list but instead bases its assessment on the symptoms mentioned here. Symptoms may vary from person to person and even within the same individual over the course of their life..

⁴ The BK Cabinet Office has published a section titled “Living with Invisible Disabilities” on its official website. <<https://disabilityunit.blog.gov.uk/2020/12/17/living-with-non-visible-disabilities/>> Accessed on 30.01.2024.

⁵ Kelly and Mutebi (n 76) 2; For further information, see the official website of the NHS Employers National Health Service Confederation (NHS - National Health Service). The NHS Employers is an official body that brings together and supports the entire health system in England, Wales, and Northern Ireland on behalf of the NHS Employers National Health Service Trusts. <<https://www.nhsemployers.org/articles/understanding-and-supporting-staff-hidden-disability>> Accessed on 11.11.2023

⁶Kelly and Mutebi op. cit. 4

⁷ D Morin and M Rivard, A G Crocker, C P Boursier, J Caron “Public attitudes towards intellectual disability: a multidimensional perspective” (2013) 57(3), *Journal of Intellectual Disability Research* 279, 292

that they do not believe in invisible disabilities.⁸ “Invisible disability” refers to health impairments that cannot be understood by anyone but can be identified by healthcare professionals.⁹

In the United Kingdom, the United States, Canada, and many other countries, efforts are being made to raise awareness about “invisible disabilities.”¹⁰ In the United Kingdom, the United States, Canada, and many other countries, efforts are being made to raise awareness about “invisible disabilities.” These awareness campaigns encompass both individuals with invisible disabilities and the general public. Due to the fact that health issues are not visible in society, and especially in the workplace, individuals with invisible disabilities may face challenges in communicating their circumstances. One of the major problems with invisible disabilities is that people are unaware that their health problems may constitute a disability. This is because, according to society, disability is something that can be seen from the outside. In Turkey, the Pulmonary Hypertension and Scleroderma Patient Association (PAHSSc) is a civil society organization raising awareness about invisible disabilities with the slogan, “Some Disabilities Are Invisible: Think Before You Judge!”¹¹ The more the concept of invisible disabilities is understood and widespread, the easier it will be to prevent individuals with invisible disabilities from facing discrimination and encountering difficulties in social life.

In the workplace, invisible disabilities are somewhat different from other areas of social life. The perception of employees with invisible disabilities as lazy or incompetent, and the failure to believe that their difficulties are real, is a significant problem.¹² For this reason alone, an employee may be dismissed on the grounds of shirking work or taking unnecessary sick leave, or their performance may be deemed poor due to dyslexia. Similarly, people with invisible disabilities may sometimes need support such as a cane to walk, while at other times they may be able to walk without such support.¹³ The disability of individuals with hearing or vision impairments may not always be immediately apparent to others.¹⁴ For example, a person with hearing loss may be able to hear in a quiet environment but may not be able to hear in a noisy environment or during communication via phone or video conferencing tools. In this respect, they are different from people who have completely lost their hearing. For this reason, invisible disabled people may experience certain difficulties in the workplace due to the lack of reasonable accommodations, and may not be able to take advantage of privileges such as parking in spaces reserved for disabled people or requesting a seat on public transportation. In the United Kingdom, it is estimated that one in five people has a disability, with 80% of these disabilities being invisible, highlighting the importance of this issue.¹⁵ When comparing visible and invisible disabilities, it has been found that individuals with invisible disabilities are less likely to be selected for job applications.¹⁶ This situation leads to discrimination against people with disabilities, particularly those with invisible disabilities, in the workplace due to the lack of reasonable accommodations.

2.2. Legal Guarantees of Invisible Disability Discrimination

2.2.1. International Assurances

European Convention on Human Rights (ECHR) : The European Convention on Human Rights (ECHR) was signed by the foreign ministers of the member states of the Council of Europe on 04.12.1950 and entered into force on 03.09.1953¹⁷. Turkey and the United Kingdom are members of the ECHR. The rights regulated under the ECHR apply to everyone. Of course, this also includes

⁸ Kelly and Mutebi op. cit. 5

⁹ Michael J. Prince, “Workplace Accommodation of Persons with Invisible Disabilities: A Literature Review” (2017) Journal of Vocational Rehabilitation 77

¹⁰ Civil society organizations and institutions working to raise awareness of invisible disabilities in Canada: Invisible Disabilities Canada, symbolized by a sunflower <<https://hdsunflower.com/ca/>> Accessed on 04.03.2024

¹¹ Pulmonary Hypertension and Scleroderma Patient Association (PAHSSc). Established on March 25, 2008. <<https://www.pahssc.org.tr/blog/10/gorunmez-engellilik>> Accessed on 03.03.2024

¹² Kelly and Mutebi op. cit. 2

¹³ (n79) Living with Invisible Barriers

¹⁴ Ann Abney and Veronica Denison vd. (2022) American Archivist 85(1), 88, 91 – 92

¹⁵ BK National Health Service (NHS) National Health Service Employers National Health Service Confederation official website <<https://www.nhsemployers.org/articles/understanding-and-supporting-staff-hidden-disability>> Accessed on 02.03.2024. NHS Employers is an official body that acts on behalf of the National Health Service Trusts, bringing together and supporting the entire health system in England, Wales, and Northern Ireland.

¹⁶ Noel Yassi and Alicia Becton “Stigmatizing Effects of Visible Versus Invisible Disabilities” (2018) 4(1), 25

¹⁷ In Turkey, the European Convention on Human Rights was published in the Official Gazette dated 19.03.1954 and numbered 8662. The United Kingdom signed the Convention on 04.11.1950 and it entered into force on 03.10.1953. The ECHR includes: right to life (Article 2), prohibition of torture (Article 3), prohibition of slavery and forced labor (Article 4), right to liberty and security (Article 5), right to a fair trial (Article 6), respect for private and family life (Article 8), freedom of thought, conscience and religion (Article 9), freedom of expression (Article 10), freedom of assembly and association (Article 11), right to marry (Article 12), right to an effective remedy (Article 13), prohibition of discrimination (Article 14). https://www.echr.coe.int/documents/d/echr/convention_tur<> Accessed on 22.02.2024

persons with disabilities. The difference of the ECHR from other texts regulating human rights is that member states of the ECHR can be sanctioned by the European Court of Human Rights (ECtHR) in case of violation of the rights regulated in the Convention. The ECHR was established in 1959 and entered into force in 1998 with Protocol No. 11 (Article 19 of the ECHR).

There are applications made by persons with disabilities under the ECHR. The case of *Bayrakçı v. Turkey*, which was heard by the ECHR, is an example of the demand of disabled people to ensure appropriate conditions in the workplace. In this case, the applicant is a tax office employee who has a 60% disability as a result of a traffic accident and can walk with a leg prosthesis. The applicant submitted a written petition to the directorate complaining that there was a disabled toilet for women at the workplace but not for men, that he had to perform tasks requiring mobility in the service where he worked, and similar complaints (ECHR 062 (2013) 28.02.2013 *Bayrakçı v. Turkey*, Facts and Cases, pp. 2-3). When these complaints failed to yield any results, she filed a lawsuit with the ECtHR, claiming that she had been discriminated against. The case was rejected on 05.02.2016 because it was filed without exhausting domestic remedies in Turkey ((ECHR 062 (2013) 28.02.2013 *Bayrakçı v. Turkey*, Legal Assessment, p. 8). Although the case was dismissed, the negative impact of the lack of proper toilet facilities in the workplace on the Applicant's daily life was mentioned. The ECtHR has declared that the feelings of humiliation and distress that the lack of appropriate conditions for disabled employees in the workplace causes in disabled persons are linked to Article 8 of the ECHR, which protects the private life of individuals (ECHR 062 (2013) 28.02.2013 *Bayrakçı v. Turkey*, 6-7).

European Social Charter : The European Social Charter is a convention aimed at protecting economic and social rights and guaranteeing civil and political rights¹⁸. This Convention is an example of the economic and social content of the ECHR. The European Social Charter is in force in Turkey and the United Kingdom¹⁹. The European Social Charter stipulates that persons with disabilities (disabled, handicapped) have the right to vocational training (education) and social and occupational readjustment, regardless of the origin and nature of their disability. Apart from any special provision, persons with disabilities have the right to education, employment, independence in social life, social integration and participation; vocational training, rehabilitation and reintegration into society, regardless of the cause and nature of their disability (Article 15).

The European Social Charter has historically been based on Second Generation rights, which include economic and social rights. The rights guaranteed by the European Social Charter include housing, health, education, employment, legal and social protection, movement of persons and non-discrimination (Articles 25-30). The Revised European Social Charter was revised and entered into force on 01.07.1999 due to developments in labor law and social policies. By adding new rights and some amendments, it is aimed to guarantee the basic social and economic rights of individuals in their daily lives.²⁰

2006 United Nations Convention on the Rights of Persons with Disabilities (Convention on the Rights of Persons with Disabilities (CPRD)) : The United Nations (UN) Convention on the Rights of Persons with Disabilities was adopted by the UN General Assembly Resolution A/RES/61/106 on 13.12.2006 and entered into force on 03.05.2008.²¹ In the background of the Convention, there are important efforts by the UN General Assembly for the disabled²². All these efforts were of great importance

¹⁸European Social Charter (European Social Charter) <https://www.anayasa.gov.tr/media/3680/avrupasosyalsarti.pdf> Access Date 22.02.2024

¹⁹Turkey signed the European Social Charter on 18.10.1961, and it entered into force upon its publication in the Official Gazette dated 16.06.1989 and numbered 20215. The United Kingdom signed the European Social Charter dated 18.10.1961 on 11.07.1962 and the Charter entered into force on the same date. European Social Charter, Official Gazette Law no: 203112, October 14, 1989

²⁰ European Social Charter Revised entered into force on 27.06.2007.

²¹United Nations Convention on the Rights of Persons with Disabilities : Turkey signed the UN Convention on the Rights of Persons with Disabilities on 30.03.2007 and it was published in the Official Gazette dated 14.07.2009 and numbered 27288. Turkey has no reservation or declaration regarding the Convention. The United Kingdom signed the UN Convention on the Rights of Persons with Disabilities on 30.03.2007 and ratified it on 08.06.2009. The United Kingdom has some reservations to the Convention. These reservations relate to military service, education and legal capacity. UN Human Rights Office online page Convention on the Rights of Persons with Disabilities dated 12.12.2006 <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities> Accessed 22.02.2024

²²Major studies on the background of the UN Convention on the Rights of Persons with Disabilities:

1971 Declaration on the Rights of Persons with Intellectual Disabilities: The UN 1971 Declaration on the Rights of Persons with Intellectual Disabilities mentions the necessity of helping people with intellectual disabilities to develop their abilities in various fields of activity and to encourage their integration into normal life as much as possible. <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rights-mentally-retarded-persons><> Access Date 24.02.2024

1975 Declaration on the Rights of Persons with Disabilities: The UN Declaration on the Rights of Persons with Disabilities of 1975 mentions the need to prevent physical and mental disabilities, to help people with disabilities develop their abilities, and to encourage their integration into normal life as much as possible. <<https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rights-disabled-persons>> Access Date 24.02.2024

1993 Standard Rules on Equal Opportunities for Persons with Disabilities: The UN 1993 Standard Rules on Equal Opportunities for Persons with Disabilities were established in the World Program of Action. Accordingly, twenty-two rules include the understanding of human rights. The essence of these rules

in the emergence of the UN Convention on the Rights of Persons with Disabilities²³. The Convention aims to ensure full and equal enjoyment by persons with disabilities of all human rights and fundamental freedoms and to strengthen respect for their human dignity (Article 1). The main rights of persons with disabilities are regulated under the UN Convention on the Rights of Persons with Disabilities²⁴. The issue of work and employment of persons with disabilities is regulated in Article 27 of the Convention. In this article, the obligations of States Parties to the Convention are as follows: recognizing that persons with disabilities have the right to work on an equal basis with other individuals; ensuring that the right to work and employment includes the opportunity for persons with disabilities to earn a living through a job of their free choice in an open, integrative and accessible labor market and work environment; ensuring that all appropriate measures, including legislative work, are taken to realize the right to work for all persons with disabilities, including those who are disabled while working (article 27/a-k).²⁵

The obligations of the member states of the UN Convention on the Rights of Persons with Disabilities are to make and implement the necessary legal arrangements for the exercise of all rights for persons with disabilities set out in the Convention. Collection of statistics and data to determine whether the Convention is being implemented (Article 31), ensuring international cooperation (Article 32), national implementation and supervision (Article 33) and the establishment of a Committee on the Rights of Persons with Disabilities to fulfill the duties assigned in the Convention (Article 34).

2.2.2. National Guarantees

Constitution of the Republic of Turkey : In Turkish Law, persons with disabilities in working life are primarily protected by Article 10 of the Constitution of the Republic of Turkey entitled "Equality before the law"²⁶. Accordingly, everyone, including persons with disabilities, is equal before the law without discrimination based on language, race, color, sex, political opinion, philosophical belief, religion, sect and similar reasons. The State is obliged to ensure that this equality is realized. The Constitution of the Republic of Turkey guarantees that everyone has the freedom to work and contract in the field of his/her choice (Article 48); that work is the right and duty of everyone (Article 49); that no one shall be made to work in jobs that are not suitable for his/her age, sex or strength; that minors and women and those with physical and mental disabilities shall be specially protected in terms of working conditions (Article 50). Everyone, including persons with disabilities, has the freedom to seek rights. Everyone has the right to claim and defend himself/herself as a plaintiff or defendant before the judicial authorities and to a fair trial by making use of legitimate means and ways. Courts cannot refrain from hearing cases within their jurisdiction (Article 36).

Law No. 5378 on Persons with Disabilities : Law No. 5378 on Persons with Disabilities is designed to ensure that persons with disabilities benefit from fundamental rights and freedoms, participate fully and effectively in social life, and lead a life worthy of

consists of preconditions for equal participation, target areas for equal participation, implementation measures and monitoring mechanism. All these rules cover all aspects of the life of persons with disabilities. < <https://www.un.org/development/desa/disabilities/standard-rules-on-the-equalization-of-opportunities-for-persons-with-disabilities.html> > Access Date 24.02.2024 Beijing Declaration on the Rights of Persons with Disabilities in the New Millennium: The Beijing Declaration on the Rights of Persons with Disabilities in the New Millennium aims to work towards an international convention that legally binds nations in line with the UN Standard Rules on Equal Opportunities for Persons with Disabilities. < > Access Date 24.02.2024

²³ Human Rights and Equality Experts Association (IHUD). Convention on the Rights of Persons with Disabilities Information Note - 08 May 2021 CPRD Convention on the Rights of Persons with Disabilities. < > Accessed 24.02.2024

²⁴ Among the rights set out in the United Nations Convention on the Rights of Persons with Disabilities: Non-discrimination and equality; women and children with disabilities (arts. 5, 6 and 7), accessibility (art. 9), right to life (art. 10), situations of risk and humanitarian emergencies (art. 11), equal recognition before the law (art. 12), access to justice (art. 13), liberty and security of person (art. 14), prohibition of torture (art. 15), freedom from exploitation, violence or abuse (art. 16), respect for physical and mental integrity (art. 17), freedom of movement and nationality (art. 18), life in the community (art. 19), personal mobility (art. 20), freedom of expression of opinion, access to information (Article 21), respect for private life (Article 22), respect for household and family life (Article 23), education in the public sphere (Article 24), health (Article 25) habilitation - rehabilitation (Article 26), the right to work and employment (Article 27), adequate standard of living and social protection (Article 28), participation in political and social life (Article 29), participation in cultural life, recreation, leisure and sports activities (Article 30).

²⁵ Apart from those listed here, among the regulations for disabled people in working life in general, discrimination is prohibited in all processes of the employment relationship (recruitment, continuity of employment, career development, working conditions, etc.). Equality of opportunity, the principle of equal pay for equal work in working life, elimination of harassment and victimization closely related to discrimination, occupational health and safety, fair and appropriate working conditions are required. It is included that disabled people can exercise their labor and trade union rights under equal conditions with other individuals, access to vocational and continuing education for disabled people, ensuring employment opportunities, ensuring their employment in all areas (public sector-private sector, self-employment), making reasonable arrangements in workplaces, carrying out programs for disabled employees to gain experience, stay at work, return to work (Article 27/a- k).

²⁶ Constitution of the Republic of Turkey, Law no: 2709, Adoption Date: 18/10/1982, OG 09/11/1982, 17863

human dignity (Article 1)²⁷. Law No. 5378 was based on the UN Convention on the Rights of Persons with Disabilities²⁸. In this context, the purpose and principles of the convention and the definition of disability were reorganized by strengthening the obligations stipulated by the provisions of the law to the states. Law No. 5378 is important in terms of including basic concepts such as discrimination based on disability, reasonable accommodation and accessibility, which were not previously regulated in the Law No. 5378. It has been made obligatory to take measures for the sustainable employment of persons with disabilities; to take measures to eliminate the difficulties for persons with disabilities who apply for a job or who are already working, and to make reasonable arrangements regarding job application, recruitment, proposed working hours and conditions. The status of sheltered workplaces where persons with disabilities are employed and the procedures and principles regarding these workplaces are regulated by a regulation issued jointly by the Ministry of Labor and Social Security, the Ministry of Finance and the Ministry of Family and Social Policies. Article 14 of Law No. 5378 regulates employment.²⁹

Law No. 6701 on the Human Rights and Equality Institution of Turkey : Law No. 6701 on Human Rights Equality Institution stipulates that everyone is equal in the enjoyment of rights and freedoms, discrimination is prohibited, and measures should be taken to prevent discrimination³⁰. Discrimination is prohibited in the employment of persons with disabilities, self-employment (Article 6(1)), job postings, workplace, working conditions, vocational guidance, access to vocational training , promotion in the profession, access to all levels of the professional hierarchy, access to social benefits (Article 6(2)).

Maritime Labor Law No. 854 : Maritime Labor Law No. 854³¹ is important as it is one of the first regulations for the employment of disabled workers (Hüseyinli, 2017: pp. 130-141). Law No. 854 regulates the working conditions of maritime workers. The rights of all workers, including disabled workers, are protected. Regarding disabled workers, *"...employers or employer representatives are obliged to employ disabled and ex-convict seafarers in their workplaces according to the provisions, principles, measures and conditions set by the Labor Law and the relevant regulation on this subject"* (Article 13). This obligation for employers ensures that disabled workers are included in employment.

Labor Law No. 4857 : In the Labor Law No. 4857³², regulations for the protection of persons with disabilities include the equal treatment obligation of the employer (Article 5), the obligation to employ persons with disabilities (Article 30), jobs where persons with disabilities cannot be employed (underground and underwater) (Article 30). Article 5 of Law No. 4857 titled "principle of equal treatment" is based on national and international sources (T.B.M.M., S. No: 73, Draft Labor Law and Report of the Health, Family, Labor and Social Affairs Committee, Article Justifications, Article 5).

Occupational Health and Safety Law No. 6331b³³ : The purpose of the Law No. 6331 on Occupational Health and Safety is to ensure occupational health and safety in workplaces in general (Article 1). The employer's obligation is to ensure the occupational health and safety of employees. In this context, it is as important to carry out risk assessment, control, measurement and research as it is to prevent occupational risks (Article 10).

²⁷Law on Persons with Disabilities, Law No: 5378, Date of Adoption: 17/7/2005, OG 07/07/2005, 25868

²⁸ United Nations Convention on the Rights of Persons with Disabilities Implementation Guide for the Judiciary (2014). T.C. Ministry of Family and Social Policies - General Directorate of Services for Persons with Disabilities and Elderly, Prepared by: İdil Işıl Gül <https://www.aile.gov.tr/media/5606/yargi.pdf> Access Date 13.12.2024

²⁹Law No. 5378 on Persons with Disabilities , m Article 14: *"Necessary measures are taken for the sustainable employment of persons with disabilities in the labor market and working environment, including the development of guidance and vocational counseling services for self-employment. Discriminatory practices based on disability cannot be applied in any aspect of employment, including job application, recruitment, proposed working hours and conditions, continuity of employment, career development, healthy and safe working conditions. Working disabled people cannot be treated differently from other people due to their disability in a way that will result against them. It is obligatory to take measures in the employment processes to eliminate the obstacles and difficulties that disabled people working or applying for a job may encounter and to make reasonable arrangements in the workplaces where disabled people work, by institutions and organizations and employers who have duties, powers and responsibilities in this regard. The status of sheltered workplaces where disabled people who are difficult to integrate into the labor market due to their disability status are employed and the procedures and principles regarding these workplaces are regulated by a regulation issued jointly by the Ministry of Labor and Social Security, the Ministry of Finance and the Ministry of Family and Social Policies"*.

³⁰Law on the Human Rights and Equality Institution of Turkey, Law No: 6701, Adoption Date: 6/4/2016, OG 20/04/2016/29690

³¹Maritime Labor Law, Law No: 854, Adoption Date: 20/4/1967, OG 29.04.

³²Labor Law. Law No: 4857, Date of Adoption: 22/5/2003, OG

³³Occupational Health and Safety Law, Law No: 6331, Adoption Date: 20/06/2012, OG 28339

Turkish Penal Code No. 5237 : Under Turkish Law, hate and discrimination is regulated as a crime in the Turkish Penal Code No. 5237³⁴. Accordingly, "It is a crime to prevent a person from being employed because of hatred arising from differences in language, race, nationality, color, gender, disability, political opinion, philosophical belief, religion or sect: (TCK, Article 122).

Regulation No. 27210 on Domestic Job Placement Services : Among the regulations for the protection of persons with disabilities is the Regulation No. 27210, which regulates the preparation of the workplace and working conditions for persons with disabilities³⁵. In this Regulation, the obligation of employers to employ people with disabilities³⁶, the implementation of vocational training, counseling and rehabilitation programs for people with disabilities³⁷, in recruitment; ³⁸, preparing the workplace and working conditions according to the disabled³⁹, determining the workplaces where the disabled cannot be employed⁴⁰ and imposing administrative fines on employers who are found not to fulfill their obligations regarding the employment of disabled workers ⁴¹.

Regulation No. 30692 on Disability Assessment for Adults : The aim of the Regulation on Disability Assessment for Adults is "to determine the procedures and principles regarding the receipt, validity, evaluation and determination of the authorized health institutions and organizations that can issue this report; to develop a common practice in areas where ratings, classifications and definitions are needed regarding disabilities and to ensure the widespread use of international classifications and criteria (article 1)"⁴². The importance of this regulation is that the determination of disability is objectively regulated by the World Health Organization "International Classification of Functioning, Disability and Health (ICF)".

³⁴ Turkish Penal Code, Law No: 5237, Adoption Date: 26/09/2004, OG 25611

³⁵ Regulation on Domestic Job Placement Services. OG T. 25.04.2009, OG S. 27210 <<https://www.resmigazete.gov.tr/eskiler/2009/04/20090425-3.htm>> Access Date 05.04.2025

³⁶ Regulation No. 27210, article 10. According to this article; "a) In private sector workplaces where they employ 50 or more workers, they are obliged to employ three percent disabled workers in private sector workplaces and four percent disabled workers and two percent ex-convicts in public sector workplaces; in agricultural and forestry workplaces where they employ 51 or more workers, they are obliged to employ three percent disabled workers in private sector workplaces and four percent disabled workers and two percent ex-convicts in public sector workplaces in jobs suitable for their occupational, physical and mental conditions".

³⁷ Regulation No. 27210, article 12. "(1) Taking into account the qualifications and conditions required by the professions and the characteristics of the disabled and ex-convicts; the Institution implements/implements vocational training, counseling and rehabilitation programs or vocational training programs in the workplace, provides job counseling services during the process of choosing the most suitable job and profession for their wishes and conditions, benefiting from training opportunities related to the profession they have chosen, job placement and job entry.(2) In order to provide the services mentioned in the first paragraph, to determine the jobs that disabled people can do and the provisions that they will be subject to in the workplace other than the general principles, to create a data sharing system accessible by the relevant institutions regarding disabled people and ex-convicts; The Agency cooperates with the Administration for Disabled Persons, General Directorate of Social Services and Child Protection Agency, General Directorate of Prisons and Detention Houses of the Ministry of Justice, General Directorate of Treatment Services of the Ministry of Health, General Directorate of Special Education Guidance and Counseling Services of the Ministry of National Education, General Directorate of Private Education Institutions and General Directorate of Occupational Health and Safety of the Ministry of Labor and Social Security. The procedures and principles regarding the cooperation shall be determined by protocol".

³⁸ Regulation No. 27210, Article 17. "(1) Discriminatory practices cannot be made against disabled persons and ex-convicts at any stage of recruitment, from job selection, application forms, selection process, technical evaluation, proposed working hours and conditions. (2) Discriminatory practices shall not be applied to the disadvantage of disabled persons and ex-convicts. (3) The provisions of Article 122 of the Turkish Criminal Code dated 26/9/2004 and numbered 5237 shall apply to public institutions and organizations and employers who show discrimination or different treatment."

³⁹ Regulation No. 27210, Article 18. "(1) Employers are obliged to prepare their workplaces in such a way as to facilitate the work of the disabled and to ensure that the work is suitable for the disabled employee, to take the necessary measures for their health, to employ them in their professions or in jobs close to their professions, to improve their knowledge and skills related to their work, to provide the necessary tools and equipment for their work. (2) In the presence of appropriate conditions, the starting and ending hours of working hours may be determined according to the status of the disabled person, provided that they are not less than the periods specified in the labor laws".

⁴⁰ Regulation No. 27210, Article 19. "Disabled workers shall not be employed in underground and underwater works. (2) Disabled persons shall not be employed in works specified in the medical board report that they cannot be employed".

⁴¹ Regulation No. 27210, Article 21. "(1) The audit to be carried out regarding the disabled and ex-convicted workers to be employed in the workplaces within the scope of this Regulation shall be carried out in accordance with the principles of audit and inspection of working life stipulated by the Labor Law No. 4857. (2) The administrative fine specified in Article 101 of the Labor Law No. 4857 shall be imposed directly by the Provincial Director of the Institution in the place where the workplace is located in accordance with Article 108 of the same Law. (3) When the Institution requests information from public and private sector workplaces on work and labor force issues, it is obligatory to provide information within the specified period. Private sector workplaces that violate this notification obligation shall be imposed an administrative fine in accordance with subparagraph (e) of the first paragraph of Article 20 of the Law No. 4904 on Turkish Employment Agency. The information collected cannot be used for purposes other than the services of the Institution."

⁴² Regulation on Disability Assessment for Adults , OG T. 20/02/2019, OG S. 30692

2.2.3. Disability Discrimination in UK Labor Law

Disability Discrimination Act 1995 : In the United Kingdom, one of the first regulations protecting disabled people in the public sphere and workplaces is the Disability Discrimination Act of 1995. In the 1970s, while there were protective laws on racism and gender discrimination, there was no legal regulation protecting discrimination against the disabled. In the 1990s in the United Kingdom, disabled people rejected charity in their protests called "Disabled People's Direct Action Network" and demanded that discrimination against disabled people be prohibited by law, and as a result, the Disability Discrimination Act entered into force on 08.11.1995 with Royal Assent (United Kingdom Parliament, House of Lords Library, 06.11.2020 "Disability Discrimination Act: 1995 and Now"). The Disability Discrimination Act 1995 defines disability as "a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities" (Chapter 50, Part 1. Disability). The 1995 Disability Discrimination Act was exemplary in that it was the first time in the United Kingdom that the types of discrimination against persons with disabilities were recognized, and that disability included the workplace and other public spaces (United Kingdom Parliament, House of Lords Library).

Equality Act 2010 : In the UK, the law applicable in the event of a breach of rights for disabled people at work is the Equality Act 2010⁴³. The Act was inspired by Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and the 2006 United Nations Convention on the Rights of Persons with Disabilities⁴⁴. In 2016, the United Nations Committee on Disability identified and reported violations of the rights of persons with disabilities in the United Kingdom on the grounds that their rights were not properly protected. When this report was presented to the UK Government, the Government rejected the report. In 2018, the United Nations Committee on Disability stated that the UK had made little progress in its policies towards disabled people⁴⁵. All this shows that disabled people in the UK are not sufficiently protected in working life and public spaces.

The Equality Act 2010 generally protects individuals against discrimination in the public sphere and therefore in the workplace. The general elements protected against discrimination are set out in Article 4 of Part 2, Section 1 of the Act. Accordingly, the protected characteristics are age, disability, gender reassignment, color, nationality, ethnic or national origin, race, religion, belief, sex (being married, pregnant, on maternity leave), gender orientation. These characteristics are protected in many areas of life. For a better understanding of the provisions in the Equality Act 2010, there is an Explanatory Note⁴⁶ and a Guide to the Equality Act prepared by the Office for Disability Issues⁴⁷. Amendments to the UK Equality Act 2023 came into force on 01.01.2024⁴⁸. The purpose of the amendments is to transpose discrimination laws originating from the European Union into UK law after Brexit. Changes related to the subject of work include the expansion of the definition of disability.⁴⁹

3. Legal Framework of Invisible Disability

3.1. Assessment of Invisible Disability in United Kingdom Employment Law

3.1.1. Disability, Elements of Disability and Determination of Disability in UK Labor Law

The Equality Act of 2010 regulates what disability means and what its elements are in the UK Law. Accordingly, disability is defined as "a person's physical or mental impairment which has a substantial and long-term adverse effect on the person's ability to carry out normal day-to-day activities and the person's ability to participate fully and effectively in working life on an equal basis with other employees" (Equality Act, Part 2, Chapter 1, Article 6, 5A(1,2)). The case will be evaluated according to the law in force before

⁴³The UK Equality Act 2010 came into force on 01.10.2010. In the United Kingdom, which consists of the states of England, Wales, Scotland and Northern Ireland, it is stated in the text of the relevant law which states they have been adopted by when making legal arrangements. The Equality Act 2010 applies geographically to the United Kingdom, England, Wales and Scotland. Northern Ireland is out of scope. (Geographical Scope of the UK Equality Act 2010 Part 1) <<https://www.legislation.gov.uk/ukpga/2010/15/contents>> Accessed 24.02.2024

⁴⁴Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. < <https://eur-lex.europa.eu/eli/dir/2000/78/oj/eng> > Accessed 24.02.2024

⁴⁵UK Parliament House of Commons Library Research Information 2022 "The UN Convention on the Rights of Persons with Disabilities: Implementation in the United Kingdom" (UK Parliament House of Commons Library The UN Convention on the Rights of Persons with Disabilities: UK implementation), 5 <<https://commonslibrary.parliament.uk/research-briefings/cbp-7367/>> Accessed 11.12.

⁴⁶UK Equality Act 2010 Explanatory Notes <<https://www.legislation.gov.uk/ukpga/2010/15/notes/contents> > Accessed on 11.02.

⁴⁷United Kingdom Equality Act Guidance 2010 < <https://www.gov.uk/guidance/equality-act-2010-guidance> > Accessed 11.09.2024

⁴⁸UK Equality Act 2010 Amendments 2023 (UK Equality Act 2010 Amendments 2023)

⁴⁹Article 2.2 of the UK Equality Act Amendment Regulations 2010 (UK Equality Act Amendment Regulation 2023).

01.01.2024, when the definition of disability was extended with the element "the ability of the person to participate fully and effectively in working life on equal terms with other employees".

The definition of disability includes the elements of disability. According to the 2010 Equality Act, the main elements of the definition of disability are a physical or mental impairment (Equality Act, Part 2, Chapter 1, Article 6(a)), where that impairment has a substantial, long-term and adverse effect on a person's ability to carry out normal daily activities (Equality Act, Part 2, Chapter 1, Article 6(b)).

3.1.1.1. Physical and mental health disorders

What constitutes physical and mental impairment for disability is not regulated in the Equality Act 2010. Physical and mental impairment does not necessarily have to be caused by a health problem or be due to a cause (Equality Law Guidelines A3, A7, 8). The Guide to the 2010 Equality Act includes some examples of physical and mental impairments. These physical and mental health problems are regulated in the Equality Act 2010 Guidelines (Equality Act Guidelines, A5, 8 - 9) .50

3.1.1.2. The physical and mental impairment has a "significant negative impact"

For a worker to be considered disabled, it is an element of disability that the physical or mental impairment has a substantial adverse effect on the worker's ability to perform daily activities (Chapter 2, Part 1, Article 6(1(a-b))). Criteria for determining whether a physical or mental impairment is substantial include the time taken to perform an action, the manner in which an action is performed, cumulative effect criteria, environmental effects, the effect of treatment, progressive conditions, severe deformities. 51

3.1.1.3. Long-term physical and mental impairment

For a worker to be considered disabled, the criterion of a significant impact of the worker's physical or mental impairment on the worker's ability to carry out daily activities is not sufficient. The long-term effect of the impairment causing the disability is also a criterion for the determination of disability (Equality Act, Part 2, Chapter 1, Article 6(1(a-b))). According to the Equality Act 2010, the health problem must last for at least 12 months to establish disability (Equality Act, Part 2, Chapter 1, Article 61(b)). Occasional regression of the physical or mental impairment does not change the duration (Equality Act Guidance, 27 - 33). The fact that a

⁵⁰ Mental and health problems mentioned in the Equality Law Guidelines are not limited to those mentioned here, but the main health problems related to disability include Sensory disorders affecting vision and hearing; 2. Disorders with fluctuating or recurrent effects such as rheumatism, arthritis, myalgic encephalitis, chronic fatigue syndrome, fibromyalgia, depression and epilepsy; 3. Motor neuron diseases, progressive forms of muscular dystrophy and dementia; 4. Autoimmune problems such as systemic lupus erythematosus; 5. Cardiovascular diseases, including organ-specific thrombosis, stroke and heart disease, including respiratory conditions such as asthma; 6. Autistic spectrum disorders, and dyspraxia; 7. Learning disabilities; 8. Mental health problems accompanied by symptoms such as anxiety, low mood, panic attacks, phobias or unshared perceptions; eating disorders, bipolar affective disorders; obsessive compulsive disorders, personality disorders; post-traumatic stress disorder and some self-harming behavior; 9. Mental illnesses such as depression and schizophrenia; 10. Injuries to the body, including the brain

⁵¹**Duration of action:** The time taken for daily activities is a criterion for determining significant impact. If a person with musculoskeletal problems is able to carry out everyday activities such as washing and dressing over a long period of time, it is assumed that there is a significant adverse impact (Equality Law Guidance 2010, p. 15)

The way the action is carried out: The way the action is carried out is also important in determining the significant impact. Accordingly, even if the person is able to perform daily activities, the difficulty compared to other people may negatively affect their daily life activities. The 2020 Equality Act Guidance gives the example of a person with Obsessive Compulsive Disorder checking electrical sockets, checking the door to make sure it is closed. This is seen as a significant negative impact on everyday life (Equality Law Guidance 2010, p. 15)

Cumulative effect Some physical and mental impairments can have a cumulative effect. Although a person may only have difficulty breathing, this may have a negative impact on activities such as walking, traveling by public transport, bathing, dressing, etc. at all stages of daily life (Equality Law Guidance 2010, p. 16).

Behavioral impact: Behavior that avoids the impact caused by the person's impairment, such as when someone with chronic back pain avoids skiing but is able to do their daily shopping (Equality Law Guidance 2010, pp. 17 - 18).

Environmental impact: Environmental conditions can have a positive or negative impact on physical and mental disorders. For example, a person diagnosed with rheumatoid arthritis may feel better or worse depending on the weather conditions. Symptoms are aggravated in cold and damp weather, while in summer (Equality Act 2010 Guidance, p. 20).

Impact of treatment: If a person is under treatment, their disease can be controlled. This is considered in the determination of disability. For example, a person with epilepsy may suppress their illness with medication while at the same time being exposed to the side effects of the medication (Equality Act 2010 Guidance, p. 21 - 22)

Progressive conditions: Examples of progressive conditions are dementia, motor neuron diseases, Systemic Lupus Erythematosus (SLE). Such problems are fluctuating and variable. While Multiple Sclerosis (MS) can cause difficulty walking in the early stages, the nature of the condition itself can be considered a direct disability. People with progressive conditions benefit from legal provisions as disabled people (Equality Act 2010 Guidance, p. 23 - 25)

Serious deformities: Seen as a significant, adverse impact as an impairment. It is considered dependent on the person's ability to carry out normal day-to-day activities (Equality Act 2010 Guidance, p. 26) UK Equality Act 2010 Guidance, pp. 14 - 23

person's physical or mental impairment changes to a different form within 2 months is not a problem for disability in terms of duration. The example given in the Guidelines is that a person with anxiety for eight months, whose health problem turns into depression and depression lasts for five months is considered as a disability (Equality Law Guidelines, 28). In some cases, a person's disability can be determined independently of whether they are able to perform daily activities. For example, if a person completely loses his/her eyesight, no duration calculation is made (Equality Law Guidelines, 9).

3.1.1.4. The impact of physical and mental impairment on a person's ability to perform normal daily activities

The meaning of the ability to carry out daily activities is set out in the Explanatory Note to the Equality Act 2010 (Explanatory Note to the Equality Act, 40). Daily activities include shopping, reading and writing, making telephone calls, watching television, preparing food, washing dishes, socializing, walking, using transport, educational and work-related activities, etc. (UK Parliamentary Research Briefing, Disability Discrimination, 2023: pp. 7-8).

3.1.1.5. The ability of the person with disabilities to participate fully and effectively in working life on an equal basis with other employees

When the 2010 Equality Act was first enacted, disability was defined as "the condition where a person has a physical or mental impairment and that impairment has a substantial and long-term adverse effect on the person's ability to carry out normal day-to-day activities". This definition refers precisely to the medical aspect of disability. In 2023, with the amendment to the Equality Act 2010, disability in the UK evolved from a medical to a social definition with the addition of "...the ability of a disabled person to participate fully and effectively in working life on equal terms with other employees".

3.1.2. Reasonable Accommodation for Invisible Disability in UK Labor Law

3.1.2.1. Determination of Disability in UK Labor Law

In the UK, if there is no agreement between the employee and the employer as to whether a worker is disabled or not, the worker is required to prove their disability through specialist medical reports and the Employment Tribunal is required to make a decision in accordance with the Equality Act 2010. Under the Equality Act 2010, "Schedule 1 Disability: Additional Provision, Part 1 Determination of disability", which is part of the Equality Act 2010, sets out the bodies authorized to determine whether a person is disabled and the criteria for determining disability. As the subject of this study is disabled workers, in the UK, the determination of disability, whether positive or negative, is made by Employment Tribunal judges (Equality Act 2010, Schedule 1 Disability: Additional Provision, Part 2, Section 12(1(a) - b)). The decision of the Employment Tribunal on disability is appealed to the Employment Appeal Tribunal.

3.1.2.2. Reasonable Accommodation for Persons with Disabilities in UK Labor Law

In the United Kingdom, reasonable adjustments were first recognized under the Disability Discrimination Act 1995 and were extended by the Equality Act 2010. A reasonable accommodation in the workplace is "a personalized and appropriate change in the way work is done that removes the barriers that a person faces in the workplace, thus enabling them to do their job in the way that best suits them". Reasonable adjustments requested by workers from employers include: flexible working or flexible working hours, telecommuting, ergonomic equipment, leave to attend hospital appointments or therapy; adjusted breaks, adjusted tasks, adjusted goals, information technology support, transportation to the workplace, adaptation to the workplace environment, phased return to work after a long break, communication support⁵². The duty of employers to make reasonable adjustments is set out in the Equality Act 2010. The employer's obligation to make reasonable adjustments for a disabled worker occurs when the disabled worker is at a substantial disadvantage compared to other workers (Article 20). It is also considered appropriate by employers that reasonable adjustments for workers in the workplace should not be limited to those protected under the Equality Act 2010, but should be extended to other workers to change the way they work (UK Disability Forum at Work 2023).

3.1.3. Discrimination against invisible disabled people in UK Labor Law

3.1.3.1. Discrimination and Types of Discrimination in UK Labor Law

According to the Equality Act 2010, discrimination is regulated in Chapter 5, Section 1, Article 1 of the Equality Act 2010. Accordingly, *an employer may not discriminate in relation to the working conditions of its employees*; in arrangements involving the characteristics of the candidates it seeks; in working conditions at the job interview; in refusing a person's application for a job

⁵²2023 Business Disability Forum, The Great Big Workplace Adjustments Survey <https://businessdisabilityforum.org.uk/what-is-a-workplace-adjustment/> Accessed 12.02.2024

(Chapter 5, Part 1, Article 1).2. *An employer may not discriminate in relation to the working conditions of its employees;* in relation to the employer's access to its employees or its employees' access to promotion, transfer, training opportunities or certain other opportunities; in the termination of the employees' employment or in subjecting them to any detriment (Chapter 5, Part 1, Article 2). 3. An employer shall not victimize anyone when rejecting a person's application for a job, including (a) in the regulations concerning the qualifications required of candidates sought by the employer; (b) in the conditions of work at the job interview (Chapter 5, Part 1, Article 3).4.The employer must not victimize anyone in the working conditions of his or her worker; (a) in the employer's provision of access to his or her worker, or in the employer's provision of access to his or her worker for promotion, transfer, training opportunities or other opportunities; (b) in the termination of the worker's employment or by exposing the worker to any harm (Chapter 5, Part 1, Article 4).5. The duty to make reasonable adjustments rests with the employer (Chapter 5, Part 1, Article 5).

3.1.3.2. Types of Discrimination

Under the 2010 Equality Act, unlawful practices against persons with disabilities in the workplace are discrimination, harassment and victimization. Although the 2010 Equality Law regulates harassment and victimization, which are closely related to discrimination, direct and indirect discrimination are included in the scope of the decision under study.

Direct discrimination :The 2010 Equality Act defines direct discrimination as "treating a person less favorably than others because of a characteristic protected by law" (Equality Act, Part 2, Section 2 (6), Article 13). For example, a job applicant is not hired because he/she declares that he/she has multiple sclerosis despite meeting all the conditions at the interview stage .⁵³

Indirect discrimination: Indirect discrimination in the workplace occurs when all workers are treated in the same way but the employer knowingly disadvantages people with a characteristic protected by law (Equality Act, Part 2, Chapter 2, Article 19). The 2010 Equality Act Explanatory Note provides an example of indirect discrimination. An employer introduced a new arrangement for staff shifts. This arrangement was not suitable for a female worker who had to look after her child at certain times of the day and had to leave her job because she was not given any reasonable accommodation. This situation may disadvantage women workers as employees because they are parents who have to take care of their children. Unless the employer has a justifiable reason for this shift change, this practice constitutes indirect discrimination against women (Equality Act Explanatory Note). Another example of indirect discrimination is the denial of Ms. Williams' request for reasonable accommodation in the case at hand.

3.2. Invisible Disability Discrimination In Turkish Labor Law

3.2.1. Disability in Turkish Labor Law, Elements of Disability

In the World Health Organization's World Disability Report 2011, disability is described as "part of the human condition". This statement is based on the assumption that everyone can be born with a disability, either temporarily or permanently. Disability is a controversial and evolving concept with different dimensions. The reason for this situation is that the concept of disability is in development and new aspects of disability are accepted by evolving over time (World Health Organization World Disability Report, 2011, p. 3). There are chronologically three approaches to understanding disability: medical, social and human rights. The medical aspect of disability is seen as the improvement of physical and mental health problems. The positive aspect of this approach is that disabled people can benefit from curative practices such as treatment and rehabilitation. The negative aspect of the medical approach is that disabled people are marginalized by the society (Kızılaslan et al., 2015: 189-191). Another approach is the social aspect of disability. This aspect has made it clear that disability is not only caused by physical and mental health problems, but also related to environmental and personal factors (World Health Organization World Disability Report, 2011, p. 5). Another aspect of disability is the human rights approach. The human rights approach has been accepted because disabled individuals have the same rights and freedoms as other individuals, but cannot effectively benefit from these rights and freedoms. As a result of the long struggles of non-governmental organizations , disabled people have become equal with other individuals (Çelik, 2016: pp. 227-228). The fact that disabled people are not needy people who need to be protected and that they can make their own decisions is the result of the human rights approach to disability (EHIS National Indicators of Disability Rights within the Scope of the UN Convention on the Rights of Persons with Disabilities, 2016, 7; World Disability Report, 2011. p. 5). All these approaches ensure the full and effective participation of persons with disabilities in social life like other individuals.

⁵³ Equality and Human Rights Commission (Equality and Human Rights Commission), Your rights under the Equality Act 2010: Disability Discrimination (Your rights under the Equality Act 2010: Disability discrimination) (2020). <<https://www.equalityhumanrights.com/equality/equality-act-2010/your-rights-under-equality-act-2010/disability-discrimination>> Accessed on 11.12.2024

In Turkish Law, the definitions of disabled and disability are included in the Law No. 5378 on Persons with Disabilities. Accordingly, disability is defined as "...an individual who is affected by attitudes and environmental conditions that limit his/her full and effective participation in society on equal terms with other individuals due to various levels of loss in physical, mental, spiritual and sensory abilities" (Article 3/c). Disability is defined as "... an individual affected by attitudes and environmental conditions that limit his/her full and effective participation in society on equal terms with other individuals due to various levels of loss of physical, mental, spiritual and sensory abilities" (Article 3/e).

Based on the definition of disability, the main elements of disability are; the loss of physical, mental, spiritual and sensory abilities of the person at various levels ; not being equal compared to others in terms of full and effective participation in society due to this loss; being affected by attitudes and environmental conditions in the individual's participation in society .

3.2.1.1. Loss of physical, mental, spiritual and sensory abilities of the person at various levels

Whether the loss of physical, mental and sensory abilities is within the scope of disability status is determined according to the classifications regulated by the World Health Organization. The aim of the International Classification of Functioning Disability and Health is to establish a common international standard in health-related situations (World Health Organization Geneva Working Towards a Common Language on Disability and Health, 2002: p. 2). In Turkish Law, the determination of whether the loss of physical, mental, spiritual and sensory abilities is sufficient for the status of disability is regulated in the Regulation on Disability Assessment for Adults No. 30692 in line with the "International Classification of Functioning Disability and Health"⁵⁴ . Functionality Disability is a condition that occurs with inadequacy in body functions, activity limitation and participation restriction. An individual's functionality and disability is not only related to his/her body. Disability is also addressed in terms of environmental and interpersonal elements (T.C. Başbakanlık Özürlüler İdaresi ICF International Classification of Functioning, Disability and Health, 2001: p. 5-6).

3.2.1.2. Disabled people are not equal to others in terms of full and effective participation in society

It is a fact that individuals with equal rights cannot fully and effectively participate in society compared to others due to disability, despite legal regulations and practices. As with other disadvantaged groups, positive discrimination for the disabled is intended to restore the balance. The Constitution of the Republic of Turkey stipulates that measures to be taken for disadvantaged groups, including the disabled (handicapped), are not contrary to the principle of equality (Article 10). In this context, examples of positive discrimination in employment for persons with disabilities and disabled workers include the obligation to employ persons with disabilities in the private and public sectors (Regulation No. 27210, Article 10), and the implementation of vocational training, counseling and rehabilitation programs for persons with disabilities (Regulation No. 27210, Article 12).

The implementation of reasonable accommodations and reasonable adjustments for persons with disabilities is one of the elements that ensure full and effective participation in society. An example of this situation is the decision of the ECtHR in the case of "**Case of Glor v. Switzerland (06.11.2009)**". Although the decision given in this case is not an issue related to the working life of persons with disabilities, the ECHR decided to impose sanctions on Switzerland due to the lack of consistent, objective criteria in determining the level of disability within the scope of respect for private life⁵⁵ .

3.2.1.3. Attitudes and environmental conditions affecting the participation of persons with disabilities in society

The social aspect of disability is related to the fact that disabled people are affected by attitudes and environmental conditions in their full and effective participation in society. The social aspect of disability is related to the negative attitude of the society towards the disabled and the access of the disabled to public spaces (Human Rights Equality Institution of Turkey (TİHEK), Report on Problems Encountered by Disabled Individuals in Access to Transportation Services 2024: p. 2-3; World Disability Report, 2011: p. 5). For a person who tries to realize his/her mobility with a wheelchair , problems such as lack of ramps, inability to access public transportation vehicles, and the prejudice of the society while all these are happening is an obstacle. Workplaces are also included in this scope. In addition to making reasonable arrangements in workplaces, it is necessary to improve practices for the disabled,

⁵⁴Regulation on Disability Assessment for Adults, Date 20.02.2019, OG

⁵⁵ In Case of Glor v. Switzerland (06.11.2009), the applicant, André Glor, a Swiss national, suffered from mild diabetes. Under Swiss law, persons with disabilities are exempt from military service. Glor was not exempted from military service on the grounds that he was mildly disabled, but he was also not directed to civilian service instead of armed service because of his health condition. Since he was not exempted from military service, Glor was fined for not doing military service. In this application, the ECtHR found in Glor's favor. The reason for this decision is that the State did not use consistent and objective criteria in determining the level of disability. It was stated that Switzerland exhibited a disproportionate and discriminatory attitude by not exempting individuals with mild disabilities from military service, but exempting individuals with severe disabilities <<https://hudoc.echr.coe.int/fre?i=002-1569> > Access Date 14.04.2025

especially transportation, in cities in daily life (Çaha, 2015: p. 140). Social security policies are of great importance in the participation of disabled people in society. Social assistance and services include disabled people like many disadvantaged groups. These services ensure that disabled people live a life worthy of human dignity. At the same time, they are protected against exclusion by society (Buluş, 2022: p. 872).

3.2.2. Determination of Disability in Turkish Labor Law

In Turkish Labor Law, whether an adult is disabled or not or the degree of disability is assessed by the Disability Health Board under the Regulation on Disability Assessment for Adults (Article 4/c-d). Six specialties are identified for disability. These are internal medicine, ophthalmology, otolaryngology, general surgery, neurology and mental health and diseases (Article 6). The "International Classification of Functioning Ability and Health (ICF)" is taken into account during disability assessment (Article 5). As a result of the assessment, a Disability Health Board Report for Adults is issued (Article 8). The disabled person or his/her guardian and the institution requesting the report have the right to object to the reports (Article 12).

3.3. Reasonable Accommodation for Persons with Disabilities in Turkish Labor Law

3.3.1. The Concept of Reasonable Accommodation for Persons with Disabilities in Turkish Labor Law

Reasonable accommodation is a practice aimed at eliminating the difference between disabled individuals and other individuals in social life, including working life (Gül, 2015: p. 33). Reasonable accommodation is also a personalized measure (Ersöz, 2020: pp. 159-161). Reasonable accommodation enables disabled individuals to take part in employment by making appropriate arrangements for them (Erten & Ataş, 2019: p. 401). An example of individualized reasonable accommodation is the inclusion of foods suitable for diabetics among the daily meals provided to workers in the workplace. Another concept related to reasonable accommodation is reasonable accommodation. Reasonable accommodation differs from reasonable accommodation in that it is not individualized but accessible to all. For example, the construction of ramps for workers with orthopedic disabilities to move easily in public spaces, making disabled toilets compulsory in public buildings, and the like are included in this scope (Gül, 2012: p. 33)

In Turkish Law, reasonable regulations are generally regulated in the Law No. 5378 on Persons with Disabilities and the Law No. 6701 on the Human Rights and Equality Institution of Turkey. Law No. 6331 on Occupational Health and Safety also includes special provisions for groups requiring special policies including persons with disabilities and women. In the UN Convention on the Rights of Persons with Disabilities, "Reasonable accommodation" *means necessary and appropriate modifications and adjustments, not imposing an undue or excessive burden, which are needed in a particular case to enable persons with disabilities to exercise or enjoy their human rights and fundamental freedoms fully and on an equal basis with other individuals (Article 2)*⁵⁶. In Turkish Law, this definition is regulated under the heading of "reasonable accommodation" according to paragraph j of Article 3 titled Definitions of Law No. 5378 (Article 3/j).⁵⁷

Law No. 6331 aims to "... regulate the rights and obligations of employers and employees to ensure occupational health and safety at workplaces and to improve safety conditions..." (Article 1). According to this law, the general obligations of the employer include "... prevention of occupational risks, taking all kinds of measures including training and information, organization, providing necessary tools and equipment, adapting health and safety measures to changing conditions and improving the current situation..." (Article 4). In the workplace, groups requiring special policies such as the disabled, young, elderly, pregnant or breastfeeding employees and women employees are in the group of employees who will be affected by certain risks within the scope of occupational health and safety. For this reason, the selection of work equipment, chemical substances and preparations (commercial drugs, preparations), the organization and layout of the workplace, occupational health and safety measures to be taken as a result of risk assessment, and the determination of protective equipment and equipment are of great importance (Article 10).

While making risk assessment for disabled workers in the workplace, measures should be taken according to the type of disability. Accordingly, there are seven categories in total: visually impaired, hearing impaired, orthopedically disabled, mentally disabled, speech and language impaired, and disabled with chronic diseases (Kabakçı & Şen, 2023: pp. 185-187). There are two interrelated possibilities between occupational health and safety and disability. The first possibility is that workers become temporarily or permanently disabled due to work accidents and occupational diseases. Another possibility is that disabled individuals are exposed

⁵⁶ 2006 United Nations Convention on the Rights of Persons with Disabilities "The concept of disability includes persons with long-term physical, mental, intellectual or perceptual impairments which constitute an obstacle to their full and effective participation in society on an equal basis with other individuals" (Article 1, Paragraph 2)

⁵⁷ "Reasonable accommodation": Necessary and appropriate modifications and measures that are needed in a given situation, that do not impose an excessive or disproportionate burden, and that are necessary and appropriate in order to enable persons with disabilities to exercise or enjoy their human rights and fundamental freedoms fully and on an equal basis with other individuals".

to physical and mental health problems by worsening their disabilities as a result of not conducting risk assessment in the workplace, not taking occupational health and safety measures, not providing protective equipment or equipment (Kabakçı & Şen, 2023: pp. 182-183).

Reasonable regulations are determined according to each country's own circumstances. Due to the process of becoming a member of the European Union, Turkish Law transposes and implements the *acquis communautaire* of the European Union Law into its domestic law⁵⁸. Labor Law and therefore reasonable accommodation for the disabled is one of the areas where Turkish Law is harmonized with the EU. In 2024, the European Commission issued Reasonable adjustments at work - Guidelines and good practices as part of the European Union Strategy on the Rights of Persons with Disabilities (European Disability Forum - European Commission presents statement on reasonable adjustments at work, 2024).

The limit of reasonable accommodation for persons with disabilities is that it does not impose a disproportionate burden on the employer's business (European Union, Reasonable accommodation at work - Guidelines, 2024). There is no doubt that it would be fair and appropriate to extend reasonable adjustments in the workplace to non-disabled workers as well as to ensure that disabled workers are fully and equally utilized as other workers. Reasonable accommodations are accommodations that employers should make in the workplace and/or workplace for persons with disabilities, from applying for a job, to performing the job, to being promoted, to receiving job-related training. Reasonable accommodations include assistive technology, personal support, organization of the workplace, flexible working hours and flexible task arrangements⁵⁹. Apart from these, it is of great importance to establish workplace policies for disabled workers (Syma, 2018: pp. 113-120). An example of reasonable accommodation for disabled workers in the workplace is given by the Court of Justice of the European Union in Judgment of 11 April 2013, HK Denmark, the Joined Cases C - 335/11 and C - 337/11, ECLI EU C: 2013:222. The importance of the judgment in this case is that without the need for disability status, employees can request reasonable accommodation from the employer if their long-term health problems reduce their capacity to perform work.⁶⁰

3.4. Discrimination in Turkish Labor Law

3.4.1. The Concept of Discrimination in Turkish Labor Law

It is an obligation for the employer to treat employees equally and prohibit discrimination in the workplace. The fulfillment of this obligation is one of the fundamental principles of Labor Law that ensures the protection of workers (Mollamahmutoğlu et al., 2024:

⁵⁸Republic of Turkey Ministry of Foreign Affairs Directorate for EU Affairs. Accession Negotiations. On 03.10.2005, the Intergovernmental Conference adopted the "Negotiating Framework Document" which regulates the procedures and principles under which the negotiations will be conducted. In this framework, negotiations are carried out through 3 main elements. Among these three elements are the adoption and implementation of the EU *acquis*. <https://www.ab.gov.tr/katilim-muzakereleri_37.html> Access Date 08.02.2025

⁵⁹EU 2024 on Reasonable adjustments at work - Guidelines: One of them, "assistive technology", provides technological solutions that help people with disabilities overcome physical, sensory or cognitive difficulties. This includes, for example, a hearing-impaired employee using a hearing aid or a visually impaired employee being able to work on a computer through screen-reader software. "Personal support" refers to the use of human assistance by employees with disabilities in the performance of their duties. For example, a hearing-impaired employee receiving support from a sign language interpreter during meetings is an example of such an arrangement. "Arranging the workspace" aims to eliminate the physical barriers that people with disabilities may face at work or while working remotely. Building ramps for employees using wheelchairs or providing ergonomic furniture for individuals with musculoskeletal disorders can be considered in this context⁵⁹. In addition, "flexible working hours" allow disabled employees to make working arrangements in accordance with their health status. "Flexible task distribution" can be implemented through methods such as allowing people with disabilities to work from home, sharing tasks with coworkers or organizing job descriptions according to individual needs⁵⁹. Such arrangements are important practices that support disabled people to take part in business life more efficiently and on equal terms.

⁶⁰In Judgment of 11 April 2013, HK Denmark, the Joined Cases C - 335/11 and C - 337/11, ECLI EU C: 2013:222, Ms. Ring and Ms. Ring on behalf of the Claimants HK Danmark Trade Union and Ms. Ring and Ms. Ring on behalf of the Claimants HK Danmark Trade Union. Ring and Ms. Skouboe Werge. One of the respondents was Ms. Ring's employer, Dansk almennyttigt Boligselskab, and the Claimant Ms. Skouboe Werge. Skouboe Werge's employer, Region Syddanmark. The case concerned the termination of both Claimants' employment after they had taken long-term medical leave. The main issue in this case is whether both plaintiffs should be considered disabled because of their reduced capacity to work due to long-term illness, and whether employers have a duty to make reasonable adjustments for workers. The claimants claim that the termination of their employment was discrimination and that the employer failed to make reasonable adjustments. The CJEU found that the claimants were justified in their claims. The reasoning of the judgment was that disability was at the heart of both claimants' long-term health problems, which reduced their capacity to perform work. Disability can be congenital or acquired. Disability is not only caused by physical health problems. Another important issue regarding the decision is the failure of employers to make reasonable adjustments to enable workers to perform their jobs. The mere failure to make reasonable adjustments is itself an example of discrimination. The legal basis of this decision is the UN Convention on the Rights of Persons with Disabilities as part of EU legislation.<<https://curia.europa.eu/juris/liste.jsf?num=C-335/11&language=EN>> Accessed on 15.02.2025

pp. 723-725). The basis of discrimination in Turkish Labor Law is the Turkish Constitution. Before the enactment of the Labor Law No. 4857, discrimination was applied in disputes arising from the Labor Law in accordance with Article 10 of the Turkish Constitution titled "Equality before the law" (Ekmekçi and Yiğit, 2024: p. 387). Moreover, the fact that the principle of equality is among the general principles of law requires the principle of equality to be observed in the employee-employer relationship without a legal regulation (Süzek and Başterzi, 2024: p. 481; Çelik et al, 2023: p. 434). As a rule, the basis for the employer's equal treatment of employees is the rule of honesty regulated in the Turkish Civil Code (Sur, 2017: pp. 37-39).

While the prohibition of discrimination is absolute for the employer, the "principle of equal treatment" in relation to discrimination is not absolute under all circumstances (Çelik et al, 2023: p. 437). Ensuring absolute equality may lead to unfair results among workers instead of protecting them (Mollamahmutoğlu et al, 2024: 27). Violation of the principle of equal treatment occurs when there is no different treatment between workers in equal situations. For example, dismissal of a hearing-impaired worker whose job is to pack the parcels in the warehouse is discrimination. In this example, the reason for the termination of the worker's employment is based on disability, which is the protected interest of the worker.

In the presence of objective, reasonable and justified reasons, differential treatment between employees is an obligation for the employer (Ekin, 2013: 163-164). Wages and termination of the employment contract are situations where the obligation of equal treatment cannot be applied in absolute terms. Determination of different wages between workers based on their qualifications is within this scope. While determining the wages of the workers based on their education level, age, seniority, skills, performance and similar factors, they may receive higher increase rates compared to other workers. In collective dismissals, while the employment contracts of some workers are terminated, the employment of other workers due to their personal circumstances, abilities and other qualifications is not considered a violation of the duty of equal treatment (Çelik et al, 2023: pp. 438-441). The conditions for the employer to apply the principle of equal treatment are that the employees are employees of the same workplace and that there is a community of workers in the workplace (Ekin, 2013: pp. 164-165).

The Labor Law No. 4857 and the Law No. 6701 on the Human Rights Equality Institution of Turkey are among the laws that protect workers with protected interests, including disability, against discrimination. Article 5 of Law No. 4857 on the principle of equal treatment includes "...language, race, color, sex, disability, political opinion, philosophical belief, religion and sect and similar reasons..." among the protected interests of workers (Article 5(1)). The interests protected at the workplace are not limited to those specified in the text of the law. Therefore, individuals with other interests that need to be protected in the labor relationship can also be protected under Law No. 4857 (Çelik et al., 2023: p. 434).

The prohibition of discrimination, which aims to protect workers, is regulated in more detail than Law No. 4857 in Law No. 6701 on the Human Rights Equality Institution. The purpose of this law is "... to protect and promote human rights based on human dignity, to guarantee the right of individuals to be treated equally, to prevent discrimination in the enjoyment of legally recognized rights and freedoms, to operate in line with these principles, to effectively combat torture and ill-treatment, and to regulate the principles regarding the organization, duties and powers of the Human Rights and Equality Institution of Turkey in order to fulfill its duty as a national prevention mechanism in this regard." (Article 1).

Law No. 6701 limits the grounds of discrimination to "... sex, race, color, language, religion, belief, sect, philosophical and political opinion, ethnic origin, wealth, birth, marital status, health status, disability and age..." (Article 3(2)). Law No. 4857 does not limit the grounds for discrimination. While Law No. 4857 covers workers, Law No. 6701 covers workers in labor relations, apprentices, trainees and individuals seeking information about the workplace or work in order to gain work experience (Article 6(1)). Unlike Law No. 4857, the prohibition of discrimination is broader in Law No. 6701. Law No. 6701 regulates that in the field of employment, "... no discrimination shall be made in any of the processes related to work, including information, application, selection criteria, recruitment conditions, employment and termination of employment..." (Article 6(1)). In this way, the scope of the prohibition of discrimination is positively expanded.

3.4.2. Types of Discrimination in Turkish Labor Law

According to Law No. 5378, discrimination based on disability is "... any discrimination, exclusion or restriction based on disability in the exercise or enjoyment of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field on a full and equal basis with others" (Law on Persons with Disabilities, Article 3/d). Disability-based discrimination includes all forms of discrimination, including failure to make reasonable accommodation (United Nations Charter, Article 2). Although direct and indirect discrimination have their own distinctions, the common point is the employer's negative use of equal opportunity (Ekin, 2013: p. 160).

3.4.2.1. Direct discrimination

Direct discrimination refers to "any different treatment based on discrimination based on disability that prevents, restricts or makes it difficult for the disabled person to enjoy rights and freedoms equally compared to those in comparable situations" (Law on Disabled Persons, Article 3/a). The criterion that distinguishes direct discrimination from indirect discrimination is that the employee whose protected interest is at the focus of discrimination is subjected to different treatment (Çetin, 2015: p.158-162). There are two conditions for direct discrimination: undesirable treatment and equivalent person. Undesirable treatment is when a person is subjected to different treatment. The other condition, the equivalent person, is important in determining whether there is direct discrimination (European Handbook on Non-Discrimination Law, 2020: 22-23).

The judgment of the Court of Justice of the European Union in *Coleman v Attridge Law* (2008) C-303/06 dated 17.08.2008 is an example of direct discrimination. In this case, the employer initiated disciplinary proceedings against a female employee after she took leave to take care of her disabled child. Although other workers also took leave from time to time, the investigation against the worker with a disabled child is an example of direct discrimination. Even if the person is not disabled, associating him/her with a disabled person is within the scope of direct discrimination.⁶¹

3.4.2.2. Indirect discrimination

Indirect discrimination refers to "putting the disabled person in a disadvantaged position in terms of benefiting from rights and freedoms due to all kinds of actions, transactions and practices that do not appear to be discrimination in appearance" (Law on Disabled Persons, Article 3/b). The conditions for indirect discrimination are a neutral rule, criterion or practice, a seemingly neutral regulation, putting a protected group at a disadvantage and a precedent person. An example of indirect discrimination is when a disabled worker with diabetes who works in a factory requests short breaks in order to consume snacks in accordance with his diet, but the employer does not accept this request (European Handbook on Non-Discrimination Law, 2010: pp. 30-31).

4. Mrs J Williams v Newport City Council in UK Employment Law: [2023] EAT 136 and its Assessment

4.1. Summary of Mrs J Williams v Newport City Council [2023] EAT 136⁶²

Plaintiff

Mrs. J. Williams is a senior social worker employed by the respondent Newport City Council since 2011 (2023 EAT 136, p. 4).

Respondent

Newport City Council is based in Wales .⁶³

Subject of the case : The claimant, Ms. Williams, who was dismissed after approximately 18 months of leave of absence due to anxiety, post-traumatic disorder and major depression in the performance of her duties, alleged that she was disabled and therefore discriminated against (2023 EAT 136, p. 4).

⁶¹Coleman (Social policy) [2008] EUECJ C-303/06 (17 July 2008).

The subject matter of this case is that the plaintiff Coleman left her job at Attridge Law Firm, where she had been working as a secretary since January 2001, on 04.03.2005 for her baby who was born in 2002 with health problems (apnea attacks, congenital laryngomalacia and bronchomalacia) requiring specialization and special care. Although the plaintiff left her job voluntarily, she stated that the negative attitudes and behaviors of the defendant caused her to come to this decision. The claimant alleged that she was treated less favorably than other employees because she was the primary caregiver of a disabled child. The basis of this unfavorable treatment was that she was denied the same accommodations afforded to parents with children working in the workplace. The claimant was not reinstated after maternity leave, whereas parent employees were reinstated; the claimant was given flexibility in terms of working hours and conditions, whereas parent employees were not; the claimant was spoken to in derogatory and abusive terms about herself and her child when she requested flexibility, whereas others were not; the claimant was threatened with dismissal when she occasionally came late to the office due to problems with her son's health, whereas other working parents were not threatened with dismissal when they were late. The case before the South London Employment Tribunal was referred to the CJEU as a matter of urgency for consideration. In line with the CJEU Directive 2007/78, the CJEU stated that within the scope of the Directive prohibiting discrimination and harassment based on disability, not only the disabled person but also the persons related to the disabled person may be subjected to discrimination and concluded that the principle of equal treatment was violated for the plaintiff who was obliged to take care of her disabled son. < <https://www.bailii.org/eu/cases/EUECJ/2008/C30306.html> Access Date 30.11.2024 > Access Date 21.12.2024

⁶²Mrs J Williams v Newport City Council [2023] EAT 136 . The judgment in this case can be found in the "Employment Appeal Tribunal judgments" section of the GOV.UK online page where UK public services and important information are available. < <https://www.gov.uk/employment-appeal-tribunal-decisions/mrs-j-williams-v-newport-city-council-2023-eat-136> > Accessed on 15.01.2024

⁶³The respondent is Newport City Council (a local authority) in South Wales < <https://www.newport.gov.uk/en/Home.aspx> > Accessed on 15.01.2024

- The claimant, Ms. Williams, a social worker, dealt with individuals in need of care as part of her profession and, where necessary, the team, including the claimant, was tasked with assessing in the family court whether the parent or parents were able to fulfill their obligation to care for a child (2023 EAT 136, pp. 4-5).
- During the hearing of a case in June 2016, the claimant was unable to give reasonable answers to the judge's questions, the judge severely criticized the claimant, and the defendant's lawyer referred to the claimant as a "human punching bag". Although this had a negative impact on the claimant, he did not suffer from any serious health problems at this stage (2023 EAT 136, pp. 5-6).
- In March 2017, the plaintiff took 28 days of leave from the defendant organization due to the anxiety he experienced when he learned that he would be assigned more duties to make evaluations in courts due to the retirement of an employee at the same workplace. There is a report given by the doctor regarding this mental illness of the plaintiff. According to this report, the doctor requested that a reasonable arrangement be made for the plaintiff to start work gradually over a period of two weeks and to be exempted from the duty of making assessments in the family court. Despite the claimant's request in line with this report, the respondent did not make a reasonable accommodation, ultimately terminating the claimant's employment after a period of sick leave lasting until September 2018 (2023 EAT 136, p. 5).

4.2. Employment Tribunal Decision

- The claimant filed a lawsuit before the Labor Court for unfair dismissal while he was undergoing treatment. In this case, he claimed that he was a disabled employee, that no reasonable accommodation had been made despite his request and that he had been subjected to indirect discrimination (2023 EAT 136, p. 9).
- The Respondent Council did not make a reasonable accommodation that the Claimant could perform other duties while on leave without performing the traumatizing task of assessing persons in need of care in court. On the contrary, it argued that conducting assessments in court was an essential element of his duties (2023 EAT 136, pp. 6-7).
- The Labor Court accepted the claimant's claim of unfair dismissal, but ruled that the claimant was not disabled and therefore had not been discriminated against on the grounds of disability (2023 EAT 136, p. 9). The basis for this decision of the Labor Court:
 1. that the plaintiff's duty was considered as a daily activity, despite the fact that it was understood that the plaintiff was not in a condition to fulfill the duty of evaluation in court; and
 2. The inference that the claimant's health problem does not affect his daily life. The reason for this inference is the claimant's statement regarding the questions asked to the claimant while determining whether his health problem was sufficient for disability. In his statement, the claimant said that he had some good days and some bad days, that he lived alone, that he did the daily chores at home by himself and that he did not have an assistant. This statement was interpreted by the Labor Court as the claimant was not disabled according to the Equality Act 2010 (2023 EAT 136, pp. 8-9).

4.3. Employment Appeal Tribunal Decision

- The claimant appealed against the decision of the Employment Tribunal to the Employment Appeal Tribunal on the grounds that he had a disability and had been subjected to indirect discrimination due to the lack of reasonable accommodation. A report supporting the claim that the claimant suffered from post-traumatic stress disorder and major depressive disorder was submitted to the court (2023 EAT 136, p. 6).
- The Employment Appeal Tribunal found that the claimant was right in his claim, that he had suffered from a health problem since March 2017, but that he was disabled (mental health problem) from August 2017, when he took medical leave, until August 2017, when he was dismissed (2023 EAT 136, Discussion and Conclusions on Grounds of Appeal, 13). The basis for this decision of the Labor Appeal Tribunal:
 1. Anxiety caused by the obligation to resume the task of conducting assessments in court, which traumatized the claimant, upon returning to work,
 2. The Labour Court erred in finding that the claimant's duty was an everyday task that had to be performed at all times,
 3. The Employment Tribunal failed to assess the impact of the claimant's disability on his daily activities. The fact that the claimant could do household chores without assistance, go shopping, have good and bad days was interpreted by the Labor Court as the claimant was not disabled (2023 EAT 136, Discussion and Conclusions on Grounds of Appeal, 16-21).

As a result, the Employment Appeal Tribunal found that the claimant was disabled during the proceedings. Accordingly, the Employment Appeal Tribunal referred the matter to the Regional Employment Judge (Regional Employment Judge) with the joint decision of the lawyers of the parties to make an arrangement to eliminate the claimant's obligation to attend hearings in the family court (2023 EAT 136, Discussion and Conclusions on Grounds of Appeal, 22).

4.4. Evaluation of The Court Decision

The issues discussed in *Mrs J Williams v Newport City Council*: Issues discussed in [2023] Employment Appeal Tribunal 136;

4.4.1. Is the anxiety, post-traumatic stress disorder (PTSD) and major depressive disorder that the plaintiff suffered while performing his duty sufficient for the plaintiff to be considered disabled?

Assessment of the Determination of Disability in UK Employment Law: Under the UK Equality Act 2010, the first element of disability is that the person's physical or mental condition must have lasted for at least 12 months. Ms. Williams' mental condition lasted for approximately 18 months. The second element for disability under the Equality Act 2010 is that Ms. Williams' mental disorder must have affected her daily activities. This element was assessed differently by the local Employment Tribunal and the Employment Appeal Tribunal. The Employment Tribunal, which based its decision on whether Ms. Williams could perform her daily activities without assistance from others, ruled that she was not disabled. The Labor Court of Appeal, however, based its assessment on the criterion that the mental disorder affects daily activities if there is a fear that the trauma will recur when the claimant returns to work or when fulfilling her duty in the family court. This situation alone demonstrates that the mental disorder affects the claimant's daily life. Ultimately, there is no doubt that Ms. Williams is disabled.

Assessment of Disability Determination in Turkish Labor Law: If Ms. Williams were an employee working in Turkey and had been exposed to the same health issues, her disability status would not be determined by the Labor Court but by the Disability Health Board. If she were disabled, the Disability Health Board Report would also determine the degree of disability. The fact that Ms. Williams is able to go shopping, prepare her own meals, and perform household chores does not mean she is not disabled. In the case at hand, the fact that courts in the United Kingdom determine disability may result in significant rights losses for disabled workers.

4.4.2. Could a reasonable arrangement have been made at the workplace without terminating the plaintiff's employment?

Assessment of Reasonable Accommodation in UK Employment Law: The subject of the case was that the plaintiff's disability, consisting of anxiety, post-traumatic stress disorder, and major depression, could have been mitigated through reasonable accommodation at the workplace. The reason the plaintiff's health issues persisted for approximately 18 months was the fear of returning to work and being called upon to testify as an expert witness in court again, which would have caused her to relive the trauma. If the defendant had provided a reasonable accommodation that allowed Ms. Williams to perform her duties other than testifying in court, there would have been no dispute between the parties. The Labor Court's failure to rule in favor of a reasonable accommodation for the plaintiff has both prolonged the litigation process and exacerbated the plaintiff's disability.

Assessment of Reasonable Accommodation in Turkish Labor Law: Under Turkish labor law, employers are obligated to make reasonable accommodations for employees with disabilities. In this context, employers are expected to adapt working conditions to a reasonable extent, taking into account the employee's health condition and working conditions. If the employer fails to fulfill this obligation and the employee is unable to perform their job as a result, it may be deemed that the employer has engaged in discrimination and violated the principle of equal treatment. Therefore, in a case similar to the Williams case, Turkish Labor Courts would assess whether the employer fulfilled its obligation to make reasonable accommodations for the disabled employee and whether it complied with the principle of equal treatment before rendering a decision.

4.4.3. Has the claimant been subjected to indirect discrimination?

Assessment of Discrimination in UK Employment Law : In the case at hand, there is no doubt that Ms. Williams is disabled and has therefore suffered indirect discrimination. The Employment Tribunal rejected the claimant's claim of indirect discrimination on the grounds of disability, but the Employment Appeal Tribunal, which reviewed the case on appeal, upheld Ms. Williams' claims of disability and indirect discrimination. The issue overlooked by the Labor Court was that the health problem experienced by the plaintiff did not fall within the scope of disability. Therefore, the Labor Court did not deem it necessary to require reasonable accommodations at the workplace. The task of conducting an assessment in family court, which caused the plaintiff to experience trauma, was not the plaintiff's sole responsibility. Despite proving this with a medical report, the defendant's refusal to make reasonable accommodations and subsequent termination of employment were deemed indirect discrimination. If conducting evaluations in courts were the only task the plaintiff could perform, it might have been reasonable not to make a reasonable accommodation for the plaintiff. However, Ms. Williams could have continued her professional life by performing her other duties as a social worker, aside from providing consultancy services in courts.

The Assessment of Indirect Discrimination in Turkish Labor Law: The UK Court of Appeal ruled that Ms. Williams had been subjected to indirect discrimination because a reasonable accommodation was not made despite her request. If a similar case had

been brought in Turkey, the Labor Court hearing the case would have concluded that the employer's failure to make reasonable accommodations despite Ms. Williams' disability report constituted indirect discrimination.

4.4.4. Mrs J Williams v Newport City Council: An Evaluation of the [2023] EAT 136 Decision in the Context of Invisible Disability

The subject of the case is the anxiety and post-traumatic stress disorder experienced by Ms. Williams while performing her job, which constitutes an invisible disability. Although invisible disability is not defined in Turkish law, Ms. Williams' health problems could have been determined as a visible or invisible disability by the Disability Health Board for Adults, regardless of whether they were visible or invisible. The main issue with invisible disabilities is social rather than legal. Ms. Williams's disregard at work, the failure to make reasonable accommodations for her despite the report from the specialist doctor, and her subsequent dismissal are precisely the kind of situation that people with invisible disabilities may face. If Ms. Williams had suffered a fracture of the tibia as a result of an accident, it would likely have been easier for the employer to be convinced that this constituted a temporary or permanent disability and to implement appropriate reasonable accommodations.

4. Conclusion

Disability – invisible disability is seen as a problem in almost every stage of human life, in education, in working life, and therefore in every area of social life. As in the decision given in the case of Mrs J Williams v Newport City Council: [2023] EAT 136, the emergence of invisible disability requires more effort than visible disability. Although Ms. Williams' invisible disability, which she was exposed to as part of her job, began in June 2016, a significant amount of time (approximately seven years) passed between the Employment Tribunal's error in assessing her disability and the Employment Appeal Tribunal's final decision in September 2023. Although we do not know the exact state of Ms. Williams' health during this long period, it is not difficult to imagine that she went through difficult times. Based on this case, it is necessary to draw some conclusions regarding disability—in particular invisible disability—in the workplace.

First and foremost, it is essential to emphasize the necessity of raising awareness about disability, particularly invisible disabilities. Invisible disabilities may go unnoticed by society and even by the individuals who possess them. In Turkey and around the world, various initiatives are being undertaken to educate the public about physical and mental health issues. This study has shown that, among all people with disabilities, there are more individuals with invisible disabilities than those with visible disabilities, both in the United Kingdom and in Turkey. It is essential to raise awareness about invisible disabilities in Turkey as well.

Another conclusion is that people with disabilities, including those with invisible disabilities, should be provided with easy access to justice at all stages of their working life, from job application to termination of employment, and that workplace policies should be established on how to communicate with employees in units where people with disabilities, including those with invisible disabilities, are employed. Ensuring that all workers have access to decent work through reasonable accommodations, and that invisible disabilities are not overlooked is essential for a dignified life. This can only be achieved through legal regulations, as well as increased awareness and understanding within society.

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