Department of Political Sciences

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European Union Law

Judgment C-631/22 and the principle of Non-Discrimination:

Disability, Employment and Equal treatment in European Union Labour Law

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Thesis outline

Introduction

The affirmation and protection of fundamental rights is one of the essential pillars of the legal order of the European Union, contributing to the creation of a common area founded on shared values such as human dignity, freedom, equality and solidarity. These last few decades have witnessed the rise of the principle of non-discrimination, from an abstract statement into an operative tool at orienting both supranational and national legislative and political decisions. It is extending its domain into several spheres of social life, including, being especially sensitive, that of labour. Employment is not only a source of income, a productive activity but a privileged means of participation in social life and a principal site for the realization of human personality.

The principle of non-discrimination is gaining ground in favour of disabled individuals. The increased focus on this social segment finds reflections in the evolution of European and international legislation which – in turn – is binding thanks to the adoption of relevant legal instruments such as Council Directive 2000/78/EC and the United Nations Convention on the Rights of Persons with Disabilities ('CRPD'), ratified by the Union in 2010. Instruments not only do prohibit all forms of direct or indirect discrimination but impose an obligation upon States and employers to furthermore ensure equal access, maintenance and advancement in work by way of reasonable arrangements. The present thesis is inserted in this normative and conceptual framework, proposing a thorough analysis of the legal protection of workers with disabilities in the European Union. The main theme of the entire study is represented by the recent judgment C-631/22 - Ca Na Negreta, delivered by the Court of Justice of the European Union on 18 January 2024. This ruling is of strategic importance – since it clarifies the scope of Article 5 of Directive 2000/78/EC – in relation to the compatibility between Union law and national legislation – in this case Spanish legislation – which allows for the automatic dismissal of a worker declared permanently unfit, without any prior assessment of the possibility of reasonable adjustments. The core of the analysis therefore focuses on the principle of equal treatment in the context of employment relations and its declination in the case of people with disabilities. The main objective of the paper is to understand whether and to what extent, the case law of the Court of Justice can fill any legislative gaps or inconsistencies in individual national laws, strengthening the effectiveness of the rights recognised by Union law. The thesis also aims to highlight how European law can act as a lever for the transformation of national legal and labour cultures, promoting a truly inclusive model of society, capable of recognising and valuing diversity. This thesis aims to make an original contribution to the understanding of the dynamics between EU law and the inclusion of persons with disabilities in employment, highlighting how a concrete case can reveal systemic criticalities and stimulate the evolution of the European legal framework. The case of Ca Na Negreta is not only the individual story of an injured worker but also

has a paradigmatic value, showing the limits of a national discipline that – although formally conforming to social security standards – is inadequate in the light of the most advanced international and European standards on non-discrimination.

The proposed analysis is divided into three chapters. Chapter 1 opens with a theoretical and historical reconstruction of the labour law of the European Union, highlighting how the themes of inclusion and protection of vulnerable categories have progressively taken a priority role in the European institutional design. This section deals with the legal foundations of equal treatment, the distinction between formal and substantive equality, and the role of the European institutions – Parliament, Commission and Court of Justice – in the definition and application of anti-discrimination policies. Chapter 2 is entirely devoted to the study of judgment C-631/22, both from a legal and factual point of view. The reference Spanish legislation, the case of the worker J.M.A.R., the preliminary ruling submitted to the Court and the reasoning adopted by the courts in Luxembourg are analysed. Particular attention is granted in articulating the duties arising from Article 5 of Directive 2000/78/EC in relation to Articles 21 and 26 of the Charter of Fundamental Rights of the European Union and the CRPD. The aim is to show how the Court, reinforcing the principle of non-discrimination, undertakes the systematic and teleological reading of EU law that strengthens the link between equality and active participation of persons with disabilities in the labour market.

Finally, Chapter 3 provides a critical reflection on the impact of the judgment in C-631/22, questioning the consequences it may have for Member States' domestic law and particularly for Spain. The necessity to reform domestic legislation to comply with European obligations is considered and prospects for regulatory harmonisation and convergence in the Union are analysed. The chapter ends with some speculative remarks concerning the future challenges of European labour law with regard to disability, in an ever-increasingly flexible, digitised and rapidly modifiable evolution of work. On the methodological level, the work complements the technical-normative examination of sources and European jurisprudence with a theoretical reflection drawing on the philosophy of law and social studies on labour, in order to grasp both the legal and social implications of the principles analysed. The interdisciplinary approach is particularly useful in the case of disability, as it allows to address the issue not only in its legal dimension but also in its cultural, structural and symbolic components. In this sense, disability is understood as a social and institutional construct rather than a mere medical condition, and discrimination is not seen as an exception but as the systemic effect of a work organization designed for a "normotype" subject.

The impact of the Ca Na Negreta judgment does not end in a strictly legal context, but also opens up a space for reflection on the model of society that the European Union intends to promote: an inclusive society, where work is not reserved for those who meet standardized productivity criteria, but is also accessible to those who have limitations, exploiting residual capacities and promoting a social and solidarity economy. In this sense, the right to work of

people with disabilities becomes a litmus test of the degree of civilization of an order. Finally, the thesis also aims to offer a prospective view, questioning how the indications provided by the Court in judgment C-631/22 can constitute a basis for future harmonisation of legislation at European and national level. In a changing world of work – marked by demographic ageing, digitalisation and flexibility – anti-discrimination law on disability represents an advanced frontier of social protection and legal equality. The promotion of accessible working environments, the spread of a culture of accommodation and the strengthening of effective enforcement instruments are challenges that the European Union will have to face with determination to ensure that the principles set out in the normative and jurisprudential sources become concrete reality for all citizens.

In short, the aim of this thesis is to contribute to scientific and legal reflection on a topic of great current and social importance, valuing the contribution of European Union law to the construction of an inclusive society model, fair and respectful of human dignity. By studying the judgment in C-631/22 and the principles it states, the aim is to demonstrate that law can be not only a regulatory instrument but also a force for change, capable of affecting social and economic structures in order to make them fairer, open and sustainable.

Chapter 1

This chapter aims to offer an extensive theoretical and normative context concerning the concepts of equal treatment and avoidance of discrimination, especially concerning persons with disabilities. With the inclusion of persons with disabilities in society and work gaining increasing significance in Europe and the world over, the need for outlining and understanding the legal and conceptual frameworks that actuate equity is important.

In the first part of this chapter, an extensive study is conducted on the history of European labour law, focusing on important non-discrimination legislation and policy formulated by the European Union. Such study entails an exhaustive examination of primary and secondary legal sources, essentially treaties, Charter of Fundamental Rights of the European Union, key directives as constituting a coherent legal framework for the protection of vulnerable groups.

The chapter then looks at how law engages with issues of inequality and discrimination, with a special focus on disability in particular. It will explore different conceptual models to understand how they define the legal perception of inequality. Several forms of discrimination will be analysed together with methods of deterring and abolishing them, particularly concerning the labour market.

Accordingly, this chapter aims at illuminating key theoretical and legal frameworks sustaining the protection of the rights of persons with disabilities in the area of employment, therefore providing a background for further academic exploration.

1.1 Overview of European labour law and non-discrimination policies

Over the years, the European project has come to emphasize social justice, rights protection and the promotion of equality. From the outset, the EU's design was not only to set up a common market to allow the free movement of persons, goods, services, and capital but to build a community based on the respect of fundamental rights. In this perspective, labour law and anti-discrimination policies have emerged as key components for enabling balanced economic and social integration among the Member States.

Labour law is not so much seen as a set of technical rules governing the relationships between workers and employers in the Union, but rather a means to promote human dignity and protect the vulnerable. Likewise, the fight against discrimination has gone from being a peripheral matter to being a key ingredient in the universal accessibility equation to economic and social opportunities. The exploitation of the principles of equality and inclusion has in fact led to the construction of a multi-level normative *corpus* that integrates primary sources, such as the treaties and the Charter of Fundamental Rights of the EU, and derived sources – such as directives and regulations – in addition

to an important jurisprudential production by the Court of Justice of the European Union.
Over time, these legal instruments have defined a European model of protection which aims to go beyond mere formal equality and promote a substantive approach capable of recognizing and removing obstacles. In fact, they prevent many individuals from accessing the world of work on an equal footing. This model has been particularly significant in combating multiple or intersectional discrimination, which affects people from socially disadvantaged groups such as people with disabilities.
This chapter aims to introduce the theoretical and legislative framework necessary to understand the EU's approach to labour law and non-discrimination policies. In the following paragraphs, we shall analyse respectively the evolution of European labour law and the general principles on equal treatment and non-discrimination in employment and finally the specific approach of European Union law towards disability as a prohibited form of discrimination. This structure will allow us to frame the normative and value context which will then be deepened through the analysis of case law in Chapter 2.

1.1.1 Labour law in the EU

It has been recently said that labour law within the length and breadth of the European Union is one of the essential instruments through which equilibrium is sought between the economic competitiveness inherent in the internal markets and the protection of the social and professional rights of Europe's citizens. This is a complex body of common rules and policies on the relationship between employers and workers therein guaranteeing fair working conditions with social protection and effective application of fundamental rights. Therefore, the fundamental aim in such legislation would have to be development that would ensure that the demands of the economy are harmonized with, dignity, well-being and safety of the worker within it.
Accordingly, within the European framework it is primarily this aspect of labour law which has developed around the following two axes: conditions of employment on the one hand, and the provisions for information and consultation of workers at the other. These working conditions can also include working hours, fixed-term and part-time contracts and transnational secondment of workers. These areas are regulated in EU directives laying down minimum standards valid in all Member States, so as to secure a uniform level of protection across the single market, regardless of the country in which the work is carried out[1].
Furthermore, a very important pillar is the right of workers to information and consultation. The European Union has laid down rules obliging companies to

[1] European Commission, *Rights at work – Labour law*, available online.

involve workers in important company decisions, such as collective redundancies, restructurings, and transfers. This participatory approach seems to reflect that the conception of the employment relationship promotes the internal democracy of the company and the social co-responsibility for economic choices.

The EU Treaties commit the EU to promote high levels of employment, social protection, the improvement of living and working conditions and social cohesion. The scope of its legislation is to lay down the minimum requirements of employment and information, thus facilitating the setting up of a European social area that transcends the national borders and is built upon commonly accepted values. Once an EU directive undergoes approval, it gets transposed into national legislation; nevertheless, it ensures that, beyond adhering to the minimum obligations given in an EU directive, the member states are free to take a step forward and lay down more progressive measure[2].

The European Centre of Expertise ('ECE') in the field of labour law, employment and labour market policies was established in 2016 to serve the European Commission in analysing national legislation, monitoring reforms and implementing employment policies under the umbrella of the European Semester and the EU 2020 strategy. This institution also plays a key role in promoting public debate on the future of social legislation and the rights of workers in the internal market[3].

Health and safety at work is one of the critical topical dimensions of European labour law. The EU has undertaken the task of legislating against occupational hazards – completing such with the 1989 Framework Directive – which makes it mandatory for employers to take preventive measures, provide training and have safe working environments. This legislation has come to be implemented along with the provisions for specific hazards such as exposure to hazardous substances or other protections of particularly vulnerable workers[4].

The EU has been taking serious discussions to highlight stricter rules regarding the microprocessors, mutagens and reproductive toxins among European workers. The most recent review of 2022 included some new harmful substances that were supposed to include exposure limit values as well as prevention measures, thereby reiterating the commitment of the EU towards providing protection to workers' health at their workplace[5].

The demographic changes in the workforce and the enhancement of chronic diseases – for instance – at working ages have compelled extra measures from the EU institutions in order to change to ease the reintegration of the workers who have been absent due to illness and the integration into the labour market of people with disabilities[6].

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[2] *Rights at work – Labour law* fn1.
[3] *Rights at work – Labour law* fn1.
[4] Council of the European Union *Protecting workers*, available online.
[5] Directive of the European Parliament and the Council, 9 March 2022, 2022/431, *on the protection of workers from the risks related to exposure to carcinogens or mutagens at work.*
[6] Directive 2022/431.

The history of European labour law is closely connected to the evolution of the integration process of the Union. The birth of the European Economic Community ('EEC') began with the Treaty of Rome in 1957. Alongside the creation of a common market, the terms of the EEC Treaty included the free movement of workers and the establishment of common policies on employment, social security and vocational training. The European Social Fund was thus created with the aim of improving employment and living standards of workers.

The speed of the process to strengthening social pillar has been manifested in the proclamation of the Charter of Fundamental Rights of the EU in 2000; this became legally binding by the Lisbon Treaty of 2009. The Charter is a fundamental document which organically unites civil, political, economic and social rights into one single fund of rights for EU citizens. There are different articles in the Charter that directly refer to the world of work among which there is Article 15 that recognizes the right of every man or woman to work and to freely choose his or her profession as well as Article 27 that provides for the right of workers to be informed and consulted, while Article 28 guarantees freedom of trade union association and strike[7].

The legitimacy of labour law is further established by Article 31 which stipulates that every worker has the right to just and favourable working conditions with particular reference to the protection of health and dignity; this encompasses paid leave and the regulation of working hours, together with the prohibition of child labour in Article 32 and the right to reconcile work and family life as expressed in Article 33. Finally, the Charter recognizes the right to social protection of all legal residents in the Union (Article 34).

The essentialization of European Labour Law and the consequent development of this law take place at central and complementary roles played by EU institutions. The European Parliament, as a body representing citizens in legislative matters, participates in the formation of standards by the ordinary legislative procedure. To this end, Parliament has shared with the Council of the European Union the power to approve regulations and laws applicable in labour matters. The Parliament tends to be more often the promoter of resolutions, studies, and policy initiatives aimed at furthering the protection of workers' interests and has a strong focus on gender equality, inclusion of disabled people and trade union rights.

The European Commission is thus the 'guardian of the Treaties', which means it is responsible for proposing European Labour Law, as well as ensuring its proper implementation by Member States. The Commission may initiate infringement proceedings against any Member State which fails to transpose, adopts an incorrect or incomplete transposition of directives, applies EU law incorrectly, or adopts measures that directly violate the Treaties. Consequently, its role is considered crucial in guaranteeing those rights, applying at

[7] *Charter of Fundamental Rights of the European Union*, European Parliament, 7 December 2000, 2000/C 364/01

an EU level, to be affected by citizens. The Court of Justice of the European Union is finally ensuring a sole and binding interpretation of European law. Its judgments – mostly delivered through preliminary ruling by the national courts – have been very effective in defining some of the key concepts of labour law and developing individual rights which enforce a principle of direct effect and those of consistent interpretation. Such rulings do not resolve concrete cases, rather, they create a permanent orientation for the jurisprudence and application of law in all Member States.
This gives EU Labour Law – through the trilateral interaction of Parliament, Commission and Court of Justice – a dynamic character to be able to cope with progress in economics, social trends, and technological changes in the world of work. This multi-level model has permitted distinct advancement construction for creating a protection system that continues searching solutions to the emerging challenges of markets, digitization, and demographic changes. The construction of Europe shows through its labour law that an economic integration cannot be dissociated from social justice.

1.1.2 The principle of non-discrimination at work

Non-discrimination is one of the fundamental precepts of the legal order of the European Union upon which its whole legal and political structure stands. The rationale behind this principle is that every person should receive fair treatment and consideration, irrespective of individual or social characteristics. In the context of the EU, one group that has gained a lot of attention considering that it embodies one of the riskier categories with regard to exclusion, especially in relation to work, is the category of persons with disabilities. Such European prohibitions have found application in the employment and social policies of the Member States and have involved relevant legal obligations that were brought against them.
Discrimination – in accordance with Article 21 of the Charter of Fundamental Rights of the European Union – is enshrined in the highest law of the Union and covers, *inter alia*, sex, race, ethnic or social origin, religion or belief, age, disability, and sexual orientation. It further prohibits discrimination on the ground of nationality in matters referred to in the EU Treaties. The foregoing provision clearly illustrates not only its interrelation with various European and international standards but also with Article 13 of the EC Treaty – now Article 19 of the Treaty on the Functioning of the European Union – with the power of adopting measures to combat specified forms of discrimination. It further relates to Article 14 of the European Convention on Human Rights, which serves as a general source of inspiration for the principle.
However, the distinction in the functional role of Article 21 of the Charter and Article 19 TFEU is that the first one is basically declaratory and guarantees the application regarding cases in which the European institutions or Member States discriminate in implementing Union law. Article 21 does not extend the competences of the Union but merely sets limits and obligations in cases where regulatory or administrative action falls within the scope of EU law.

Article 19 TFEU – on the other hand – confers a genuine legislative power on the Union: The Council – on a proposal from the Commission and after consulting the Parliament – may adopt specific measures to combat discrimination based on sex, race or ethnic origin, religion, disability, age or sexual orientation.
This instrument constitutes a foundation stone for certain provisions, one of which is Directive 2000/78/EC.
It establishes a general framework for equal treatment in employment and working conditions. Its main objective is to make sure that no person is discriminated against in the workplace basing on religion, belief, disability, age or sexual orientation. It applies in all fundamental areas of life at work from access to employment and promotion, conditions of employment and dismissal, vocational training and participation in union or similar bodies. There is direct discrimination where one person is treated less favourably than another in similar conditions and indirect one which arises when a neutral seeming rule or practice leads to a particular disadvantage for some groups. Harassment is also a discrimination type that is unwanted behaviour which assaults an individual's dignity created comfortable ensuring environment. However, this directive does not apply to differences of treatment based on nationality or to public social security and protection systems, which remain governed by other rules. In close connection with the principle of non-discrimination enshrined in Article 21, the EU Charter of Fundamental Rights devotes Article 26 to the protection of persons with disabilities. In this article, the Union recognizes and respects the right of these persons to benefit from measures promoting their autonomy, social and professional integration and participation in community life. This means that the Union and its Member States have pledged to support proactive policies that promote self-determination, accessibility, vocational training, adaptation of working environments, and the removal of physical and cultural barriers. The practical level of these rights can be ensured only by placing obligations on Member States that are directly responsible for the implementation and enforcement of European standards. These obligations are derived from the principle of sincere cooperation embedded in the EU Treaties and consist of a variety of legislative, administrative, and judicial measures, which should first include ensuring that the Member States transposed European directives into their national law. This equips its law with the principles set down by the EU so that citizens could go to court in their own country and assert those rights with remedies efficiently applied.
Secondly, Member States are called to adopt active policies to prevent and combat discrimination, particularly in the field of employment. These measures may include information campaigns, training activities for employers and employees, promotion of the culture of inclusion and establishment of accessible, diversity-friendly working environments. The need to set up independent monitoring bodies such as equal opportunities agencies or labour inspectorates, which have powers of inspection and advisory assistance and are

also in the position to collect the data necessary for assessing the effectiveness of measures put in place.
A more specific requirement of Directive 2000/78/EC is that there must be reasonable accommodation for people with disabilities. Thus, employers should ensure that necessary adjustments are made to the workplace or to the way work is done – be they public or private – in such a way that these workers have access to and can keep a job on equal terms with their counterparts. This may include – for example – altering physical spaces, using assistive technologies, or modifying working hours. For their part, the States will also have to support all these actions through regulatory and financial instruments such as tax relief, public subsidies, and specific incentives for inclusive enterprises.
At last, all the Member States must establish efficient controlling and sanctioning mechanisms for compliance with the European rules. The authorities entitled to do so will intervene in cases of breach with the application of proportionate and dissuasive sanctions. It's also important that workers from discrimination have access to easy and inexpensive procedures for obtaining justice quickly. And Member States are required to regularly report to the European Commission on the progress of implementation of the standards, good practices adopted and critical findings received.
In short, the principle of non-discrimination and the promotion of inclusion of people with disabilities translate into an articulated system of binding rules and precise obligations for member States in the European legal order. Through a combination of rights recognized by the Charter, legislative acts such as Directive 2000/78/EC and national implementation mechanisms, the European Union pursues a model of society based on equality, on the autonomy and participation of all citizens, regardless of their personal circumstances.

1.1.3 Discrimination based on disability in European law

In European policies, disability rights have become one core subject in equal treatment and anti-discrimination. Legislation development in this area is strongly affected by international legal acts and the evolving understanding of European case law. The UN Convention on the Rights of Persons with Disabilities ('CRPD') in particular has provided key definitions of disability and consolidated the concept of inclusive and substantive equality. The European Union ratified the CRPD and thus undertook the obligation of applying its principles in all its policies, including policy areas like employment and labour law.
According to Article 1 of the CRPD, persons with disabilities are defined as persons with long-term physical, mental, intellectual, or sensory impairments that, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.
This definition represents a radical change from more medical or static views of disability, as it highlights the importance of environment and social context in creating disadvantaged situations. Disability is therefore not only a personal

condition, but the result of the interaction between a handicap and external obstacles that prevent the effective exercise of rights.
Article 2 of the CRPD – which defines discrimination based on disability as any distinction – also reinforces this approach; exclusion or restriction based on disability which has the aim or effect of jeopardizing the recognition or exercise, on an equal basis, of fundamental rights and freedoms in all areas of life. This definition also expressly includes the refusal of reasonable accommodation, considered a form of discrimination.
The principle is realized and translated into cogent terms by Directive 2000/78/EC, which symbolizes the European framework for equal treatment in employment and working conditions. Article 5 of the Directive introduces, – with much clarity – the notion of reasonable accommodation, which states that to uphold the equal treatment principle, the employer must take appropriate measures designed to cater to the specific needs of persons with disabilities in granting them access to employment, work, advancement, or training. Nevertheless, such measures should not impose any disproportionate burden on the employer[8].
As the legal expert, Sandra Fredman, has observed, disabled people cannot be forced to adapt to a system designed for those with no disabilities, but it is the system itself that must be modified to include everyone. A purely formal approach to equality would therefore be insufficient. For this reason, reasonable accommodation requires that disability-related difficulties be considered, and measures taken to overcome them, such as modifying the physical environment, adjusting working hours or redistributing tasks.
Accommodation measures include but are not limited to changes in the physical configuration of work environments through the construction of ramps, lifts or ergonomic stations; provision of working hours according to health necessities; installation and use of assistive technologies such as software for blind persons or devices that aid; alteration in tasks or offering specific training courses organized for peers and superior staff. Simply put, it is not only about formal protection but also effective realization of the right to equality through access, duration, and professional advancement of people with disabilities in conditions of real equality.
The balance between accommodation and burden is central in European regulation. In this sense, Article 5 of Directive 2000/78/EC states such an obligation only where reasonable means would not represent a disproportionate burden on the employer. Disproportionality should take into consideration economy, size of the undertaking and availability of external assistance for covering cost. Therefore, generic indications of organizational or financial difficulties are insufficient: denial of such a person would need to be justified in a specific and proportionate manner.

[8] Directive Council of the European Union , 27 November 2000, 2000/78/E *establishing a general framework for equal treatment in employment and occupation.*

This principle has also been the subject of a case law developed by the Court of Justice of the European Union – as in the well-known *HK Danmark* judgment[9] – where the Court has made it clear that the reasonable accommodation obligation is central to respect for equal treatment and cannot be circumvented through restrictive interpretations. The case law has helped to strengthen the scope of the concept of disability – moving towards a vision compatible with that proposed by the CRPD – which focuses not on handicap itself, but on society's ability to remove the obstacles arising from it.
Ultimately, the EU's approach to disability is based on an inclusive social model that recognizes the interaction between the individual and the environment as a determinant in the production of inequalities. The concept of reasonable accommodation – as defined by Directive 2000/78/EC and inspired by the UN Convention – is a key instrument for transforming the principle of equality from a mere theoretical statement to a concrete and protected right. The employer is thus called upon to play an active part in the construction of truly accessible working environments, where diversity is not only accepted but also valued as a resource for the community.

1.2 Theoretical implications of equal treatment and prohibition of discrimination on the basis of disability

The fundamental norms of modern law represent equality and prohibition of discrimination embody an inclusive society that values the dignity of individuals. Principles of equality and prohibition against discrimination view disabilities through a lens that enlightens the discourse concerning law and challenges many of its norms, cultural, social and economic as well. The recognition of the rights of persons with disabilities cannot be limited to the mere formal enunciation of equality, but requires a critical analysis of the structures and models that generate, nurture or tolerate forms of exclusion, marginalization or systemic inequality.
This chapter aims to deepen the theoretical implications underlying the implementation of the principle of equal treatment and the prohibition of discrimination based on disability, by emphasizing the need for a change in legal thinking and public policies. Disability cannot be seen solely as a personal condition, but rather as the result of an interaction between individual characteristics and environmental, social and institutional barriers. This vision – now

[9] HK Danmark, Court of Justice of the European Union, 11 April 2013, Joined Cases C-335/11 and C-337/11, *Ring and Skouboe Werge v Dansk almennyttigt Boligselskab and Dansk Arbejdsgiverforening*. In this judgment, the Court clarified the definition of "disability" under Directive 2000/78/EC, stating that it includes a limitation resulting from long-term physical, mental or psychological impairments which, in interaction with various barriers, may hinder the full and effective participation of the person in professional life on an equal basis with others, in line with the UN Convention on the Rights of Persons with Disabilities.

widely shared internationally – requires a critical re-reading of the traditional categories of law and the ways in which anti-discrimination protection is achieved.
The text will outline various forms of discrimination – direct and indirect – and their consequences for legal protection and public intervention.
The second part of the study will address the impact of non-discrimination policies on the labour market which is still one of the areas where disability remains a significant barrier to inclusion. Interventions to improve the employability of persons with disabilities will include the fields of reasonable accommodation, active labour market policies and incentives for employers. The contribution of European and national institutions in promoting professional inclusion and counteracting stereotypes that still prevail in the employment context will also be assessed.
In this way, the chapter aims to provide a broad and articulated reflection on the theoretical bases of the fight against discrimination based on disability with the realization being that only an integrated approach, combining law, ethics and social practice, can lead to a full realization of substantive equality. Knowing the theoretical and normative roots of these dynamics is relevant not only to strengthen existing protection but also to conceive a further array of legal instruments and public policies that can respond to the challenges posed by a constantly changing society.

1.2.1 Patterns of discrimination, disability and legal protection

It is important to distinguish between direct and indirect discrimination with regard to anti-discrimination law generally in Europe and how such inequalities manifest in the workplace, particularly concerning people with disabilities. Direct discrimination and indirect discrimination both harm workers but operate differently and require different legal tools for identification and sanctioning.
By a process of distinguishing between treatment less favourably than that of another in a comparable situation, such treatment relates to a risk factor, such as disability, ethnic origin, age, or sexual orientation. Such is the process that is explicitly or implicitly motivated by a characteristic protected by law. In *D.H. and Others v. the Czech Republic* the European Court of Human Rights has established that direct discrimination is present when there is a "difference in treatment of persons who are in similar or significantly similar situations based on an identifiable characteristic"[10].
Sometimes the discriminatory motive can be disguised behind generic business motives. However, the case-law has clarified that evidence of discrimination may arise from the reconstruction of the context and the link between the contested conduct and the protected factor. For example, in some cases it has been shown that the non-renewal of a fixed-term contract was linked to

[10] *D.H. and Others v. the Czech Republic*, European Court of Human Rights, 13 November 2007, Application no. 57325/00.

the worker's disability status, thus constituting direct discrimination. It is necessary – even if it is not made explicit – to prove the intent for discrimination in such cases.

On the other hand, an apparently neutral provision, criterion or practice has an indirect discriminatory effect, that is, it brings out unfavourable consequences on a group of people as a result of a requirement disproportionality imposed upon them. In the case of people with disabilities, such indirect discrimination could be manifested through unnecessary physical or organizational requirements leading to effective exclusion of people with functional limitations. In these cases, it is not an explicit discriminatory intention but the objective effects that a neutral rule or practice has on vulnerable groups. It is precisely in order to prevent such situations that European law imposes on employers the obligation to adopt reasonable arrangements, the failure to implement which itself constitutes a specific form of discrimination.

Disability discrimination can be identified through various indicators. First, differential treatment will reveal whether an able individual suffers worse treatment than others within the same situation. The second question, however, is whether the employer has objective justification for his or her differential treatment. More specifically, such justification would not apply where reasonable means of accommodation could provide non-discriminatory alternatives. Another criterion is the effect of an apparently neutral rule, which may even unintentionally result in discriminatory effects. The kind of working conditions and incidents of reported harassment constitute also very important factors: failure to remedy may thus offend the principle of non-discrimination.

Not making reasonable accommodation is one of the varieties of discriminatory behaviour directed against people with disabilities. These are changes or adaptations made within the working environment to make it possible for the disabled person to carry out his duties on equal terms. Such arrangements may include – for instance – the provision of specific equipment, assistive software, architectural changes or flexibility in work hours. Not providing an essential tool such as a screen reader to an employee with visual impairments, is a violation of the principle of equal treatment.

The classification of degrees of permanent disability which serves as the basis for the benefits offered to the worker is thus another important perspective to analyse the impact of disability in the work environment and the level of protection that is available therein. Permanent partial disability reduces working capacity by more than 33% and, therefore, provides for the following benefits: aids and prostheses (from 34%); registration on lists for targeted placement (from 46%); and leave for treatment (from 50%). For total permanent disability in the usual profession, partial exemption from the ticket (from 67%) is provided along with a monthly allowance (from 74%). Persons with absolute permanent disability get an invalidity pension based on the fact of being 100% disabled, while anyone with great disability needing continuous care gets an accompanying allowance regardless of means.

Thus, models of direct and indirect discrimination are valuable analytical tools for understanding the structural inequalities facing people with disabilities in

the world of work. The combination of both legal and practical criteria – such as the demand for reasonable accommodation and evaluation of the impact of apparently neutral criteria – becomes a necessary reassurance to equal opportunity and a truly inclusive workplace environment respecting all workers' dignity.

1.2.2 The impact of non-discrimination policies on the labour market

In recent years, the European Union has made significant progress in defining and implementing policies to ensure equal treatment and inclusion of people with disabilities in the world of work. The aim is to overcome a purely formal conception of equality, to arrive at a substantive perspective that recognizes people's different starting points and actively intervenes to remove the obstacles that prevent real social and work participation.
Regarding work, the 2021-2030 EU Strategy on the Rights of Persons with Disabilities is the very document through which the Union intends to fortify the rights of persons with disabilities in all walks of life. Ultimately, it seeks to provide a common operational framework to foster inclusion, participation, and equal access as part of support toward the implementation of the UN Convention on the Rights of Persons with Disabilities, to which the EU and all its member States subscribe[11].
The strategy rests on the right to work. In this respect, the Council of the European Union has pointed out that stable and quality employment is indeed necessary for enabling economic independence, social inclusion, and decent living for people with disabilities. While figures – however – indicate the enduring extreme inequities: in the year 2021, the employment rate against the backdrop of nearly 75% for persons without disabilities was around 50% for persons with disabilities aged 20 to 64 years. Women with disabilities are worse off as they have relatively lower employment rates and lower wage levels compared to their male counterparts[12].
In response to the inequality, the EU has taken a broader number of initiatives and has invited Member States to articulate their national goals for increasing employment rates for people with disabilities by 2024. These recommendations include a non-discriminatory approach which takes individual needs into consideration, strengthening the national framework for reasonable accommodation, facilitating flexible working arrangements and access to support and rehabilitation services. The Council also stressed the need for improved data collection and mobility of good practice as essential for monitoring policy performance.
The European disability card and the European Parking Card, the importation of which extends to the third-country nationals legally resident in a member state, are some of the major instruments envisaged by the strategy. The

[11] *Strategy for the Rights of Persons with Disabilities 2021–2030*, European Commission, 3 March 2021, COM(2021) 101 final.
[12] Council of the European Union, 2 December 2024, *Council calls for greater support to help persons with disabilities access the labour market* available online.

measures are published in the Official Journal of the European Union in November 2024, so as to facilitate free movement and mutual recognition of the condition of disability, thus enabling easier enjoyment of rights linked to accessibility and autonomy.
One of the key features of this strategy is to strengthen accessibility thus recognized as an enabling condition to enable effective exercise of rights. The Commission has announced the AccessibleEU, a European accessibility resource platform intended to promote policy coherence and contribute to the development of concrete tools, common standards and good practices. Accessibility, then, is not only codified as a legal principle but also as a mean to securing autonomy, participation and active fulfilment in society[13].
The strategy also addresses intersectional discrimination, acknowledging that people living with disabilities are sometimes more susceptible to violence or abuse when the disability combines with certain factors such as sex or gender, ethnicity, age, social class, or sexual orientation. For this reason, proposed measures are not just focused on the job aspect but also economic access to other priority areas of justice, education, health, culture, and leisure.
In the field of employment, the participation of non-discrimination is expressed also through incentives and active measures for the employment of persons with disabilities. The Commission fosters inclusion by financial support, training employers, flexible working arrangements, and the employment setting. Reasonable accommodation remains a key pillar for equal opportunity based on Directive 2000/78/EC and UNCRPD.
Commitment will then be shared further to implement the strategy. The European Commission calls on all institutional actors-both national and local-to incorporate disability in all public policies so that people with disabilities are active in decision-making and evaluation. Multi-level governance, transparency in monitoring, data collection, and targeted utilization of EU funds are key to achieving the objectives of the strategy in making Europe fairer, more resilient, and inclusive.
Therefore, these policies in Europe against discrimination at work will not just enshrine principles, but translate the ideas into actions that will make equal opportunities real. Therefore, in this context the employment inclusion of persons with disabilities is by far the most important indicator to demonstrate by evidence the level of civilization and social justice of the Union.

Conclusion

The first chapter presents the introductory framework that is necessary for defining the evolution and theoretical underpinnings of European labour law and non-discrimination, with a particular emphasis on disability issues. Through the examination of the normative sources and general principles governing

[13] *Council calls for greater support to help persons with disabilities access the labour market* fn12.

labour law in the European Union, one can certainly say that an equal treatment principle should emerge as the basis for not only the active participation but also inclusive citizenry within a common legal area based on the values of dignity, equality, and solidarity. Such an area is one that forms the minimum protection standards applicable in each of the Member States, while allowing for a variety of individual national systems.

Thus – in this context – disability is an individual matter but it is also indicative of how far social policies can implement fundamental rights. Thus, the perspective of the theoretical consequences of the prohibition of discrimination on the ground of disability has revealed the cultural and regulatory evolution from the medical model of disability towards a social model emphasizing the action of barriers in the environment-institutional and cultural inequalities. This has changed profoundly the interpretation of the right to equality, which has also brought about a more dynamic and substantial conception of equality capable of taking differences into account without translating them into disparities.

Particular emphasis is placed on the working environment, where people with disabilities still face structural barriers to access and permanence in the labour market. Non-discrimination policies, backed up by active promotion measures such as reasonable accommodation and job placement tools, represent concrete attempts to redress the balance of disadvantage and ensure full and independent participation in economic and social life. However, the effective implementation of these tools requires a continuous commitment from institutions, employers and civil society as well as an adequate level of cultural awareness.

Ultimately, this first chapter has laid the foundations for a thorough understanding of European labour law in an inclusive manner, emphasizing the importance of a theoretical and normative approach capable of combining formal and substantive equality. The following chapters will thus be able to deepen the application, jurisprudential and comparative aspects, offering a more complete picture of the challenges and opportunities related to the protection of persons with disabilities in the world of work.

Chapter 2

A truly interesting contribution to interpreting the non-discrimination principle on the ground of disability as enshrined in Directive 2000/78/EC is the judgment of 18 January 2024 in the case *J.M.A.R. v. Ca Na Negreta SA* (C-631/22). The Tribunal Superior de Justicia de las Islas Baleares referred questions to the Court of Justice of the European Union for a preliminary ruling regarding the challenge to the Spanish legislation allowing for the automatic termination of the employment contract upon recognition of total permanent incapacity ('IPT') without the prior evaluation of reasonable accommodation measures. Furthermore, this chapter aims to provide a systematic framework for the decision, examining its legal basis and relevance in the context of EU anti-discrimination law. The facts of the case, the characteristics of the claimant's employment relationship and the stages of the national proceedings will be analysed, with particular attention to the applicable Spanish legislation. Finally, the questions referred for a preliminary ruling which led the Court to clarify the scope of Article 5 of Directive 2000/78 and the obligations incumbent on employers in respect of workers with disabilities will be explained.

2.1 General framework of the judgment

Case C-631/22 is an occasion in which one could analyse certain basic features of the European Union legal order – with particular emphasis on the role of the Court of Justice – the legal order for the protection of persons with disabilities and the rationale of the preliminary ruling mechanism[14]. It is – in fact – pertinent to properly contextualize this ruling regarding the internal functioning mechanisms of the Court of Justice of the European Union, the legislative framework fitting for it, and lastly, the evolution of the proceedings leading to a request for a preliminary ruling.

The Court of Justice of the European Union has become one of the main pillars of the European institutional architecture. Its role is to ensure that all Member States comply with EU law on the basis of the uniform interpretation of the law. The ECJ fills this role by not only resolving disputes among institutions or between States but also actively promoting the fulfilment of rights by European citizens under the Treaties and Union law. One of the ways the Court conducts this work is through the preliminary ruling procedure. The procedure allows national courts to suspend proceedings in certain instances to ask the Court to interpret a European rule when the doubts arise as to its relevance. This cooperative system with national courts ensures that the EU law is uniformly construed and effectively applied within the boundaries of Europe.

This very case is linked to that logic and it was referred to Court by way of reference for preliminary ruling submitted by the Tribunal Superior de Justicia

[14] Judgment of the European Court of Justice, 18 January 2024, Case C-631/22, *J.M.A.R. v. Ca Na Negreta SA.*

de las Islas Baleares into a labour law dispute about automatic nullity of J.M.A.R.'s employment as a result of being declared totally permanent unfit for work. The main legal issue that arose in this regard related to a requirement in Spanish law that automatically terminated the relationship without imposing on the employer an obligation for reasonable accommodations or viable alternatives to termination. This state of affairs raised clear doubts as to its compatibility with the principle of equal treatment and the prohibition of discrimination on grounds of disability enshrined in European Union law.
In order to grasp the full importance of this postponement, several references to the relevant European normative framework will be necessary. Directive 2000/78/EC established a framework for equal treatment pertaining to employment and working conditions and contains a specific requirement for employers to take reasonable measures to ensure the entry and retention in employment of disabled persons unless such measures would constitute a disproportionate burden. This requirement is reinforced by the Charter of Fundamental Rights of the European Union, which prohibits all forms of discrimination in Article 21 and acknowledges disabled persons' right to benefit from measures that ensure autonomy, social and professional inclusion in Article 26. To these instruments would be added the UN Convention on the Rights of Persons with Disabilities, which inspired a social approach to disability based on eliminating the barriers rather than mere compensation by impairments.
It is thus a judgment in C-631/22 that positions itself at that intersection of these different legal instruments. It creates the demand for a coherent and systematic interpretation guaranteeing effective protection of the rights of persons with disabilities.[15] The substantive question has to do with much more than the individual case of J.M.A.R.; it touches upon fundamental principles of European law-the prohibition of discrimination, the inclusion right to work, the obligation of reasonable accommodation and an application of proportionality in respect of national rules.
Briefly stated, this broad framework leads us to understand how the ruling in C-631/22 is part of a larger picture with regard to the evolution of Union law towards a greater professed protection of fundamental rights, and confirms the vital role played by the Court of Justice as guarantor of both uniform interpretation and effective protection of human dignity and full social participation of persons with disabilities[16].

2.1.1 A brief introduction to the Court of Justice of the European Union and its role

The Court of Justice of the European Union ('ECJ') is the supreme judicial body of the European Union, with the task of ensuring that Union law is interpreted and applied in a uniform manner in all Member States. Founded in

[15] Judgment *J.M.A.R. v. Ca Na Negreta SA.*
[16] Judgment *J.M.A.R. v. Ca Na Negreta SA.*

1952, the ECJ has become an essential component of the European institutional system, contributing to legal integration and strengthening the protection of the fundamental rights of European citizens. The ECJ has several powers of fundamental importance. One of its main duties is to rule on requests for preliminary rulings. It is this process that is indispensable for ensuring the uniformity of interpretation of EU law. National courts that have doubts on the interpretation or validity of an EU law may – or in some cases must – suspend proceedings before them and refer the issue to the Court. The response, given by the ECJ through either a judgment or order, is binding, not just upon the referring court but also upon other courts in the Member States applying the same provisions.

Besides preliminary rulings, the ECJ also has jurisdiction over infringement proceedings, which essentially scrutinize a Member State for an alleged breach of its obligations under EU law. The actions may be brought by the European Commission or another Member State. The moment the Court finds an infringement, the State must restore the situation as soon as possible. In the case of continued infringement, it can set out financial penalties.

The ECJ is also competent in annulment actions by which the legality of acts of the European institutions may be sought. Through these actions, the annulment of legislative acts contrary to the Treaties or fundamental rights may be sought by Member States, the institutions and – in certain cases – private citizens. There are also the actions for omission, which occur when a European institution fails to adopt an act required by the Treaties. Finally, it is now possible to bring actions for damages against the Union for unlawful actions by its institutions or officials. It is structurally split into two bodies, namely the Court of Justice and the General Court. The former handles the overwhelming majority of the preliminary rulings, annulment actions and appeals considered by the Court of Justice. The latter is the leading court of first instance in cases instituted by individuals, undertakings, or in certain instances, Member States, concerning competition law, State aid, and intellectual property.

The ECJ consists of one judge per Member State, assisted by advocates general appointed for renewable terms of six years. They elect – among themselves – a president for a three-year renewable term.

Court has two phases of activity, oral and written. In the written procedure, the parties manifest their case and make their observations, while the Judge-Rapporteur prepares a preliminary report for the oral procedure. This happens in public hearings, during which the parties' lawyers present their arguments and answer questions from the judges and the Advocate-General. The Advocate-General submits – quite often – a reasoned opinion where he has been called upon to do so, which is not binding but that very often takes part in the consideration leading to the final decision.

The Court decides in chambers of three, five or fifteen judges, depending on the importance and complexity of the case. In exceptional cases, the Court can sit as a Grand Chamber or as a Plenary Assembly. The Court plays an important function in its various roles: it attends to the unity, consistency, and full operation of Union law within the territory of the European Union. Its

function is vital in ensuring the defence of citizens' rights to maintain a well-oiled internal market and promote the basic values of the European Union.
It was indeed in Case C-631/22 that the Court was called upon to give a preliminary ruling aimed at clarifying the topic on the meaning to be attributed to Directive 2000/78/EC and the principles of the Charter of Fundamental Rights of the European Union[17]. This is well integrated into the mission of the ECJ to ensure respect for European law and to protect the rights of persons with disabilities and puts on record again the decisive role that the Court plays in reinforcing the legal order of the Union.

2.1.2 The Judgment in the Context of European Union Law: Directive 2000/78/EC and the Principle of Non-discrimination on Grounds of Disability

Ruling C-631/22 forms a part of and, as such, depends on a very intricate European legal framework that secures equalization and ensures protection accommodating a disabled population within labour markets[18]. It stipulates laws such as Directive 2000/78/EC, the Charter of Fundamental Rights of the European Union, and the United Nations Convention on the Rights of Persons with Disabilities ('CRPD'), which was ratified by the EU in 2010.
The Directive is based on Directive 2000/78/EC and discussed in the General Framework for Equal Treatment in Employment and Occupation, where it prohibits discrimination against any person in any way in relation to access and opportunities for people with disabilities into the labour markets and into the occupations for which they might be considered, thereby preventing disadvantageous conditions.
The Article 1 of the Directive entitled the law on equal treatment; Article 2 manifests an approach on distinction between direct discrimination – when one person is treated less favourably than another in a similar situation by reason of a protected characteristic – and indirect discrimination – when an apparently neutral provision puts persons with a specific characteristic at a disadvantage unless this can be justified by an objective reason.
Article 5 requires that employers implement "reasonable accommodation" for the disabled, except in cases where this causes an undue hardship. They are defined as modifications of the workplace and/or tools and/or work patterns and other organizational inputs that may provide assistance to disabled workers in the accessibility, retention, or advancement in employment. When judging whether a certain accommodation would create undue hardship, an understanding of the size and resources of the employer and the potential for public funding becomes important.
The Charter of Fundamental Rights of the European Union strengthens further the protection of rights of persons with disabilities. Article 21 prohibits all kind of discrimination, *inter alia*, by disability. Article 26 acknowledges and

[17] Judgment *J.M.A.R. v. Ca Na Negreta SA.*
[18] Judgment *J.M.A.R. v. Ca Na Negreta SA.*

appreciates the right of disabled persons to measures assuring autonomy, social and professional inclusion and active participation in community life. Legislations against these articles shall serve as legal constraint for the institutions of the Union and the Member States while performing their role in implementing Union law. Ratified by the EU, the UN Convention on the Rights of Persons with Disabilities ('CRPD') has been a milestone in modifying the interpretation of the notion of disability under European law.
The CRPD's approach to disability is that of moving away from the medical model and toward a social model: the view that barriers need to be removed in order for inclusion to take place. Therefore, a disability is perceived as being composed of an impairment and barriers to full and effective participation arising from that impairment in the interaction with environmental conditions. Disability under CRPD is based on the concept developed from interpretations drawn from physical, mental, intellectual, or sensory impairments together with behavioural and environmental degrades to complicate full and effective participation in society. The judgment in C-631/22 fits precisely into this framework. The Spanish National Court of Spain refers to the ECJ regarding one, whether the legislation in question allows for the automatic termination of employment on grounds of permanent unsuitability, is or not, compatible with Articles 2 and 5 of Council Directive 2000/78/EC, with Articles 21 and 26 of the Charter and Articles 2 and 27 CRPD. In particular, the query was about whether failing to have an obligation to take reasonable steps created a prohibited distinction and whether or not it was permissible to terminate the employment contract without first trying the appropriate measures for keeping the disabled worker employed. The aim was to ensure that anti-discrimination protection did not become an abstract principle, but found practical application. In this sense, the request for interpretation is particularly significant since it seeks to clarify whether Union law imposes a positive obligation to take reasonable measures even where national provisions provide for automatic termination of employment relationship. In reaffirming that the principle of equal treatment requires employers to implement reasonable measures to assist disabled workers to remain – such measures barring undue hardship –the Court reiterated that in the absence of such duties under Spanish national law, serious doubts arose as to the compatibility of the provisions of the Spanish legislation with EU legislation, thus warranting the intervention of the ECJ.
By this judgment, the Court reaffirmed its role as guarantor of the effectiveness of the fundamental rights of persons with disabilities, promoting an inclusive conception of European society and confirming the importance of the integrated approach provided for in Directive 2000/78/EC, the Charter of Fundamental Rights and the CRPD. The judgment stresses that the protection of people with disabilities cannot be purely formal, but must be translated into concrete and proportionate measures to ensure real inclusion in employment.

2.1.3 Overview of why the case was referred to the ECJ

The judgment in C-631/22 was delivered by the Court of Justice of the European Union on 18 January 2024. This case came to the attention of the CJEU through a reference for a preliminary ruling by the Tribunal Superior de Justicia de las Islas Baleares, in the context of a dispute between the worker J.M.A.R. and the company Ca Na Negreta SA[19].
The dispute at national level arose as a result of the termination of J.M.A.R.'s employment contract, which was based on the recognition that he was permanently and totally unfit to carry out his usual occupation as truck driver. After suffering a serious accident at work and a subsequent phase of temporary incapacity, J.M.A.R. had asked and obtained from the company to be reassigned to a less burdensome job, compatible with his new physical condition[20]. Nevertheless – following the judgment recognising its permanent unsuitability – the company had proceeded to terminate the contract on the basis of Article 49, paragraph 1, letter e) of the Spanish Workers' Statute.
In the national dispute, the worker had challenged the lawfulness of the termination of the contract, on the grounds that the employer should have considered the possibility of taking reasonable accommodation measures before making the dismissal. In particular, J.M.A.R. pointed out that the reassignment to compatible tasks which had already taken place in practice demonstrated the practical feasibility of an alternative solution to termination[21].
The court of first instance rejected the appeal, arguing that the Spanish legislation provided for the employer's right to terminate the contract automatically in the event of recognition of a total permanent unfitness, without any obligation to try alternative solutions. However – at the appeal stage – the Tribunal Superior de Justicia de las Islas Baleares had expressed doubts as to the compatibility of this provision with EU law, and had reached the decision to stay proceedings and refer a preliminary ruling to the Court of Justice.

> Más allá de la circunstancia, tal vez anecdótica, de que fuera un órgano de dicho orden jurisdiccional el que planteara la primera cuestión prejudicial española inmediatamente después de la adhesión de nuestro país a las Comunidades Europeas, no sería exagerado afirmar que en la actualidad los jueces y tribunales españoles mantienen una actitud claramente favorable a la utilización del diálogo judicial que instaura el art. 267 del Tratado de Funcionamiento de la Unión (TFUE), siendo particularmente destacable la labor de los órganos judiciales del orden social en ese terreno[22].

The request for a preliminary ruling concerned the interpretation of Articles 2, 4.1 and 5 of Directive 2000/78/EC, Read in the light of Articles 21 and 26 of the Charter of Fundamental Rights of the European Union and Articles 2 and 27 of the UN Convention on the Rights of Persons with Disabilities.
As noted in NR Rodriguez's comment:

[19] Judgment *J.M.A.R. v. Ca Na Negreta SA.*
[20] Judgment *J.M.A.R. v. Ca Na Negreta SA.*
[21] Judgment *J.M.A.R. v. Ca Na Negreta SA.*
[22] SAHÚN (2024: 24).

> "el TJUE declara que el art 5 de la Directiva 2000/78/CE interpretado a la luz de los artículos 21 y 26 de la CDFUE y de los arts 2 y 27 de la Convención sobre los Derechos de las Personas con Discapacidad, debe interpretarse 'en el sentido de que se opone a una normativa nacional que establece el empresario puede poner fin al contrato de trabajo por hallarse el trabajador en situación de incapacidad permanente para ejecutar las tareas que le incumben en virtud de dicho contrato debido a una discapacidad sobrevenida durante la relación laboral, sin que el empresario esté obligado a prever o mantener ajustes razonables con el fin de permitir a dicho trabajador conservar su empleo'"[23].

The main question put to the Court was whether national legislation permitting the automatic termination of an employment contract for a recognised disabled person is in conformity with EU law, without obliging the employer to consider reasonable accommodation measures or to check the proportionality of such measures. He was particularly keen on knowing if the principle of non-discrimination based on disability as enshrined in both the Directive and the Charter truly imposes upon the employer an obligation to search for alternative solutions prior to dismissal, and whether any departure from this obligation would amount to a discriminatory act by the employer. It was also a question of understanding whether the mere provision in law of an automatic termination case, without prior assessment of the concrete circumstances of the case and reasonable possible alternatives, was compatible with EU law. The importance of the reference for a preliminary ruling in this case did not only concern the protection of the individual worker, but also touched on questions of principle which are fundamental to the Union's legal order, in particular respect for the rights of persons with disabilities and the obligation on Member States to fully implement their obligations under Directive 2000/78/EC, the Charter and the CRPD. The Court of Justice, in its judgment, has adopted a systematic approach consistent with established case law on anti-discrimination protection. He pointed out that EU law requires that, before a disabled worker is made redundant, the employer should take all reasonable steps to enable him to remain in the organisation, unless such measures entail a disproportionate burden.

In particular, the Court clarified that the concept of "reasonable accommodation" implies a positive and concrete obligation to take practical measures to enable workers with disabilities to continue working. This obligation cannot be circumvented by relying on a national provision which automatically provides for the termination of the employment relationship. Therefore, it is for the employer to show that he has considered alternative possibilities and could not effectively pursue them without incurring a disproportionate burden. The ECJ went on to state out that Article 21 of the Charter prohibits all forms of discrimination on grounds of disability, and Article 26 places an obligation on the Member States to ensure measures to promote these people's employment. In addition to this, Article 27 of the CRPD emphasizes the promotion of an inclusive workforce and the acceptance of reasonable adjustments as instruments of achieving labour inclusion. The Court's judgment in Case C-631/22

[23] RODRÍGUEZ (2024: 603-604).

is therefore of great importance, by reaffirming the principle that Union law does not allow automatic solutions that exclude disabled people from working without a concrete assessment of their adaptability. It reinforces the duty of Member States and employers to ensure effective inclusion, in line with the fundamental values of dignity, equality and participation that inspire the entire European project.

2.2 The facts underlying the dispute

Case C-631/22 stems from a specific case involving a Spanish worker – J.M.A.R. – and the company Ca Na Negreta SA[24]. The analysis of the facts which gave rise to the dispute is essential in order to fully understand the context in which the reference for a preliminary ruling to the Court of Justice of the European Union took place. Only by examining closely the personal and judicial path of the worker, and the specificities of the Spanish law applied to his case, is it possible to grasp the scope of the issues raised in the European context.

The accident suffered by J.M.A.R. and the consequences that have followed mark the beginning of the story. Taken on with demanding operational tasks, the accident caused a radical change in his health condition and – consequently – in his working capacity. This transformation of the worker's personal situation highlighted a series of problems inherent in Spanish national legislation – which automatically regulated the termination of the contract in the event of total permanent unfitness – without any obligation to take alternative measures or reasonable accommodation by the employer.

The main problem that emerged was precisely this rigidity of legislation: the Spanish law considered the occurrence of an unsuitability as an automatic cause of termination of employment, failing to assess the practical possibilities of keeping the worker in employment through job adjustments. This approach was in direct conflict with the principle of employment inclusion and equal treatment of people with disabilities, enshrined in EU law. It is precisely on this point that the subsequent litigation was focused, brought forward by J.M.A.R. through a series of judicial actions.

The analysis of the facts at national level shows that the worker – despite the recognition of his total permanent unfitness – had initially been readjusted to tasks compatible with his state of health, demonstrating that they can still make a useful contribution to the company organisation. However, the formal recognition of his incapacitating condition has led to the automatic termination of the relationship, in application of a law that did not take into account the remaining working capacity nor the effectiveness of the accommodation measures.

[24] Judgment *J.M.A.R. v. Ca Na Negreta SA.*

This situation highlighted a strong contrast between two different approaches: on the one hand, the national approach, based on formal rigidity and automatism of procedures; on the other hand, the European approach, aimed at promoting flexible and personalised solutions, able to exploit the remaining skills of people with disabilities and ensure their continued employment.
The judicial process followed by J.M.A.R. at internal level has proved to be emblematic of the difficulties encountered by disabled workers in effectively defending their rights, where national rules are not fully in line with the principles laid down by Union law. Initially, the Spanish courts have confined themselves to the literal application of existing legislation, without questioning the need to interpret it in the light of European obligations. It was only on appeal, in view of the persistence of inconsistencies between national and EU law, that the Spanish court considered it appropriate to refer a question for a preliminary ruling, Asking the Court of Justice decisive questions as to whether national legislation is compatible with the principles of equal treatment and reasonable accommodation. The examination of the facts underlying the dispute thus makes it possible to appreciate that the question raised did not relate exclusively to the correct application of a domestic rule, but involved fundamental principles of European law such as the dignity of the person, the working autonomy of persons with disabilities and the duty of institutions and employers to take all reasonable measures to facilitate their professional integration.
Through the reconstruction of the concrete event, it is possible to understand how the case C-631/22 represents much more than a simple individual labour dispute. It is an emblematic case, capable of calling into question the adequacy of national legislation in relation to European standards for the protection of fundamental rights, and highlights the crucial role of the Court of Justice in promoting a more inclusive social model that respects diversity.

2.2.1 The concrete situation: who is the claimant, what is his condition of total permanent incapacity and what was his employment relationship

The case leading to C-631/22 at the Court of Justice of the European Union concerns J.M.A.R., an employee of Ca Na Negreta SA. He was hired for a full-time position in truck driving for household waste from October 2012 onward. This was a physically demanding job: the driving of heavy vehicles on various routes, sometimes complex manoeuvres, loading and unloading of collected materials, and traveling in all weather conditions.

> "El origen de los autos es un accidente de trabajo por el que el trabajador pasa a situación de incapacidad temporal que queda extinguida por resolución dictada por el Instituto Nacional de la Seguridad Social (INSS), en virtud de la cual se le reconoce el derecho a una indemnización por lesión permanente no incapacitante, pero se le deniega la IP. El trabajador solicita a la empresa que le destine a un puesto de trabajo compatible con las lesiones padecidas, solicitud que es aceptada por el empresario, siendo destinado a uno 'menos exigente'. En paralelo, el trabajador presenta demanda contra la resolución del INSS denegatoria de la IP, dictándose sentencia por la que se le declara en situación de IPT,

> motivo por el cual el empresario resuelve el contrato de trabajo al amparo del artículo 49.1 e) del ET, extinción contra la que el trabajador interpone demanda. La sentencia de despido del Juzgado de lo Social n.º 1 de Eivissa desestima la misma al entender que el reconocimiento de la IPT justifica 'que se pusiera fin al contrato de trabajo' sin que exista una 'obligación legal por parte del empresario de destinarlo a otro puesto de trabajo dentro de la misma empresa', recurriéndose en suplicación ante el Tribunal Superior de Justicia (TSJ) de las Islas Baleares, el cual precisa: 1) En autos no se discute la homologación automática de la situación de IPT y la discapacidad. 2) El artículo del ET no ha sido adaptado a la Directiva 2000/78 ni a la Convención en el sentido de que una IPT opere como causa automática de extinción del contrato 'sin que deba cumplirse ninguna formalidad ni abonarse indemnización alguna' y sin que tal resolución tenga que estar supeditada 'al cumplimiento de ninguna obligación previa de realizar ajustes razonables', aun cuando la empresa había acreditado «la viabilidad de tales ajustes, reubicando al trabajador en otro puesto dentro de la empresa"[25].

In this work environment – particularly exposed to physical risks– an event occurred that was destined to radically change the professional situation of J.M.A.R. In December 2016 – while performing his duties – he suffered a serious accident at work which resulted in an open fracture of his right calcaneus[26]. This lesion – even as a result of the treatment received – left permanent results: the calcaneus, being a fundamental supporting bone for balance and walking, once compromised, severely limits the ability to support loads, to walk for a long time or to maintain the posture required to drive heavy vehicles.

After the incident, J.M.A.R. entered a phase of temporary incapacity from work. During this time, he underwent various therapeutic and rehabilitation interventions intended to help him improve his physical condition. Despite medical efforts – however– his functional capabilities did not return to pre-accident levels. There remained – in fact – a significant and permanent physical impairment, which compromised the ability to carry out all the activities typical of his original work role.

At the end of the period of temporary incapacity, the situation was formally assessed by the Instituto Nacional de la Seguridad Social ('INSS'), the competent body in Spain for social security. By decision of 18 February 2018, the INSS granted J.M.A.R. a lump-sum compensation for permanent injuries of 3,120 euros, but did not grant the worker a status of permanent unfitness. In substance – according to the INSS – although there was clearly a physical injury, it was not a handicap such as to justify recognition of the pension for total or absolute incapacity.

Faced with this decision, J.M.A.R. chose to contest the refusal by turning to the competent court, considering that his ability to work as a truck driver was now irreversibly impaired. This challenge would have played a crucial role in the subsequent development of the dispute.

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[25] GARCÍA (2024: 194).

[26] Judgment *J.M.A.R. v. Ca Na Negreta SA.*

In parallel to the litigation against the INSS, J.M.A.R., aware of his own physical limitations, turned to his employer and requested a reassignment to tasks compatible with his state of health. Significantly, the company Ca Na Negreta accepted this request, demonstrating a certain willingness to adapt working conditions: J.M.A.R. was in fact assigned to the service of mobile collection points – a less burdensome activity – which involved a daily driving time of about 40 minutes, compared to the many hours required for traditional door-to-door waste collection.

This reassignment demonstrated a fundamental fact: despite the permanent impairment, J.M.A.R. was still able to provide a useful and productive work activity for the company, if properly adapted. This will be one of the most important factors in the subsequent assessment by the Court.

It should also be noted that there are no performance problems or operational incompatibilities in the new job, reinforcing the argument that reasonable solutions can actually enable the disabled person to continue working, thus preserving their professional and personal dignity. Despite these attempts to adapt, the social security dispute continued: the worker was not satisfied with the lump-sum compensation received and asked for recognition of total permanent unfitness, he felt that the remaining limitations prevented him from carrying out his "usual" occupation as a driver.

The court hearing the case accepted J.M.A.R. 's appeal and, by judgment of 2 March 2020, recognised his right to a pension for total permanent incapacity. In particular, the judgment made it clear that even if the worker had been reassigned to other jobs, his physical condition no longer allowed him to carry out the activities of his original professional qualification in a normal and continuous manner, that of truck driver[27].

As a direct consequence of this judicial recognition, the company Ca Na Negreta notified the worker on 13 March 2020 of the termination of the employment relationship, using the provision provided for in the Spanish Workers' Statute: the employment contract may be automatically terminated if a total or absolute permanent unsuitability is recognised.

This termination of the contract will then constitute the event which triggered the dispute leading to the reference for a preliminary ruling. For J.M.A.R., in fact, the dismissal was a discriminatory act which took place despite the effective possibility of continuing to work, for the employer, it was simply a matter of formal and correct application of existing legislation. In summary, the initial picture sees a worker who – despite having suffered serious physical damage and having limited his operational scope – was still fully able to contribute to the business activity through adapted tasks. The rigidity of the Spanish legislation – which provided for automatic dismissal – ignored this concrete reality, giving rise to a potential violation of the European principles of equal treatment and inclusion.

[27] Judgment *J.M.A.R. v. Ca Na Negreta SA.*

2.2.2 The issue raised: refusal of a benefit, exclusion from a protection or measure envisaged

The situation of J.M.A.R. – despite its specificity– represents a paradigmatic case of exclusion of a person with disabilities from a protection measure that is considered essential by the law of the European Union: the right to continued employment through reasonable solutions. The heart of the problem is precisely this: the applicable Spanish legislation did not require the employer to attempt to keep the disabled worker in service through organisational changes or reassignment to other compatible tasks.

Following the judicial recognition of the total permanent unfitness, Ca Na Negreta limited himself to terminate the employment contract, relying on a provision of law that legitimized the automatic termination of the relationship without further formality. However, this formal approach – although apparently correct in terms of national law – appeared to be in stark contrast with the principles of non-discrimination and work inclusion now established at a supranational level.

The main problem was not so much the existence of legislation governing dismissal in the event of disability, rather the absence of an obligation to evaluate in advance the adoption of alternative measures to keep the worker in the organization. The concrete possibility of assigning J.M.A.R. another task – already successfully implemented for a significant period – made it clear that this was not an abstract hypothesis or difficult to realize.

In fact, the Spanish legislation equated total permanent unfitness with events such as the death of the worker or absolute unsuitability for any type of activity. This assimilation proved problematic: on the one hand, the total inaptitude concerned the inability to exercise one's usual profession, not a general incapacity for work. On the other hand, the disability acquired during intercourse should have triggered a system of protection designed to ensure continuity in employment, not automatically leading to exclusion from the world of work.

What emerges clearly from the case of J.M.A.R. is the short circuit between two legal logics: the national one, which favours a drastic and formalistic solution through the termination of the relationship, and the European one, which favours an approach based on accommodation and the exploitation of the disabled person's remaining working capacity.

One particularly significant element is that J.M.A.R. – although formally recognised as permanently unfit to perform his previous duties – had not been declared incapable of work in absolute. He had shown that he could successfully fill another role within the company. The adaptation of his tasks had allowed him to continue his work for more than a year, without any particular operational or management problems.

However, the Spanish law did not provide for any safeguard mechanism of this situation: reassignment to another post, although concretely possible and implemented, was not binding on the employer. There was no obligation to keep the worker on duty, nor to show that maintenance would entail a dispro-

portionate burden. The absence of a proportionality check and a concrete assessment of available alternatives constituted, in this particular case, a serious regulatory gap.

> El artículo del ET no ha sido adaptado a la Directiva 2000/78 ni a la Convención en el sentido de que una IPT opere como causa automática de extinción del contrato 'sin que deba cumplirse ninguna formalidad ni abonarse indemnización alguna' y sin que tal resolución tenga que estar supeditada 'al cumplimiento de ninguna obligación previa de realizar ajustes razonables', aun cuando la empresa había acreditado 'la viabilidad de tales ajustes, reubicando al trabajador en otro puesto dentro de la empresa'[28].

Another problem was that the Spanish legislation allowed for termination without any consultation or dialogue procedure between employer and employee. The adoption of reasonable solutions requires – on the basis of principles established at European level – an open comparison process in which the needs of the company are balanced with the rights of the worker to active and continuous participation in working life.

The Spanish system was therefore inadequate to meet the minimum standards required by EU law for the protection of persons with disabilities. It was based on an excessively rigid and automatic approach, incompatible with the principle of personalisation of interventions which characterises the European discipline.

The problem raised in the J.M.A.R. case was therefore broader than the individual dispute: it called into question the entire Spanish regulatory framework relating to the treatment of events that are invalidating in employment relationships. In particular, it raised questions about the compatibility of such legislation with the objective of work inclusion pursued at European and international level.

Nor can the psychological and social impact of automatic dismissal in a situation such as that of J.M.A.R. be overlooked; means not only denying an income, but also a fundamental element of identity, dignity and participation in community life. This aspect has been strongly emphasized by the European legislator in the construction of anti-discrimination protections for people with disabilities. In the final analysis, the problem which arose in the present case was that a national legislation was inadequate and by ignoring the remaining potential of the disabled worker and the possibility of reasonable adaptation, exposed him to automatic dismissal, he violated his fundamental rights. This situation made it necessary to involve the Court of Justice, to provide a binding interpretation of Union law in this area and to guide the national court in the correct application of European principles on disability protection in the workplace.

[28] García (2024: 194).

2.2.3 The course of the case at national level and how the reference for a preliminary ruling was made

After the recognition of permanent incompetence by the competent judicial authority, and the subsequent termination of the employment contract by the company Ca Na Negreta, the worker J.M.A.R. initiated a new litigation in the area of labour, challenging the lawfulness of his dismissal. This phase of the case took place entirely within the Spanish judicial system and eventually led to the preliminary reference to the Court of Justice of the European Union.

At national level, the first step was the appeal lodged by J.M.A.R. before the Juzgado de lo social n. 1 of Ibiza, the court competent for disputes in labour law. The worker claimed that the termination of the relationship was unlawful because the company, although it could take reasonable steps to enable him to continue working in jobs compatible with his health (as it had already done), had chosen instead to dismiss him without considering such possibilities.

However, at this stage the court dismissed the appeal. The judgment of 24 May 2021 was based on the literal application of existing Spanish legislation, in particular article 49, paragraph 1, letter e), of the Workers' Statute (Estatuto de los Trabajadores). This provision provides that the employment contract may be terminated in the event of total permanent unfitness, without imposing on the employer any obligation to take measures or to verify the possibility of reassignment of the worker. According to the court of first instance – therefore – Ca Na Negreta had acted in full compliance with national law and there was no reason to contest the validity of the dismissal.

"Según jurisprudencia del Tribunal Supremo, la IPT no obliga al empresario a despedir al trabajador, no impide la reubicación en otro puesto de trabajo, pero tampoco le obliga a realizar la misma, 'salvo que así esté establecido convencional o contractualmente' "[29].

Not satisfied with the outcome, J.M.A.R. proposed an appeal before the Tribunal Superior de Justicia de las Islas Baleares, the court of appeal competent for labour disputes. It was in this context that the doubts about the conformity of the Spanish legislation with the law of the European Union emerged more clearly.

The court of appeal found that although Spanish law permitted termination of the employment contract in the event of total permanent unfitness, this legislation did not appear to take account of the obligations arising from the European directive on equal treatment in employment and working conditions. In particular, the Directive requires that – before making a disabled worker redundant – the employer shall take all reasonable steps to ensure that the person remains in the working environment, unless this would entail a disproportionate burden.

The problem encountered was twofold: on the one hand, the Spanish legislation provided for an automatism which did not leave room for a concrete assessment of the possibilities of adapting the workplace; On the other hand, it

[29] GARCÍA (2024: 194).

did not impose any obligation on the employer to justify the dismissal on the basis of the disproportionality of the accommodation measures.
This regulatory rigidity was even more problematic in the light of the facts of J.M.A.R.'s case: as shown, the firm had been able to successfully assign him another job compatible with his physical condition, allowing them to continue working without operational difficulties. The termination of the contract therefore appeared not as an inevitable necessity, but rather as a consequence of the mechanical application of a rule that is now outdated in relation to the European principles of disability protection.
Furthermore, the Tribunal Superior de Justicia de las Islas Baleares noticed, as stated in the Workers' Statute mentioned above in Article 49, that it dated from the 1980s and had since not undergone any reform for European affairs purposes as well as the obligations under the UN Convention on the Rights of Persons with Disabilities, which Spanish ratified. In effect, this national legislation was steadied on a now anachronistic notion of disability understood purely as limiting and incompatible to work, without recognizing the active participation principle that is mostly central today.
On the basis of these elements, it considered that the case should be suspended within Spain and brought before the Court of Justice of the European Union, proposing a reference for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union. In it, this procedural mechanism to which national courts and judges may resort is to obtain clarifications on the interpretation of European law at the moment that a question of compatibility arises between national rules and EU legislation.
In the preliminary reference, the Spanish court made the following basic questions: The first was whether a national provision, removing a worker from the workplace at the cessation of total permanent unfitness with respect to the worker, is compatible with Community law unless the employer is bound to make reasonable adjustments or demonstrate disproportionality of such measures. The second was whether this legislative action constituted direct discrimination by reason of disability within the meaning of basic rights laid down in the Charter of Fundamental Rights of the European Union and equal treatment directives.
The decision to bring the reference for a preliminary ruling was based on the conviction that Spanish law – as applied in the present case – did not guarantee an adequate level of protection for disabled workers compared with European standards. In particular, the court sought to clarify whether the absence of a reasonable accommodation obligation constituted a breach of the principle of equal treatment and – consequently – if it was necessary to disapply or reinterpret national legislation in order to adapt to supranational obligations.
The question referred to the Court of Justice therefore did not concern only the individual case of J.M.A.R., but had a much wider scope, calling into question the systemic validity of an entire sector of Spanish labour law, by calling into question the fundamental principles of dignity, autonomy and social inclusion of people with disabilities.

Conclusion

The case examined by the Court of Justice of the European Union in its judgment of 18 January 2024 (Case C-631/22) forms part of a legal framework of particular relevance to the Union's anti-discrimination law, with concrete implications for labour law and the social protection systems of the Member States. The origin of the case is a concrete and frequent situation in the labour market: a worker who – as a result of an accident at work – finds himself in a state of health which does not allow him to continue his previous job. However, the response of the employer and the national legal system to his new status raises a number of important legal questions, not only internally but above all in the light of EU law.

From a regulatory point of view, the issue revolves around Article 49.1 e) of the Spanish Estatuto de los Trabajadores, which provides for the possibility of terminating the employment contract in case of recognition of the worker's permanent incapacity. However, the internal standard has not been updated to fully transpose the obligations arising from Directive 2000/78/EC and the UN Convention on the Rights of Persons with Disabilities. In particular, it does not impose an obligation on the employer to assess or apply prior reasonable accommodation (ajustes razonables) before proceeding with the dismissal of the disabled worker. This point is the fundamental issue of the dispute: the Spanish legislation allows for the automatic termination of the employment relationship following a declaration of total permanent incapacity – without any assessment of the possibility of redeployment – nor the obligation to demonstrate that such a measure would constitute an excessive burden on the undertaking.

The Spanish National Court held it appropriate to suspend proceedings and send questions to the ECJ for preliminary rulings concerning two key queries: whether Article 5 of Directive 2000/78/EC in conjunction with the Charter of Fundamental Rights of the EU as well as the UN Convention stands against national legislation which provides for automatic termination of the contract in case of PTI without requiring the employer either to undertake reasonable accommodation or to prove that such accommodation is not possible; and whether such a provision could amount to direct discrimination on the grounds of disability.

Following this discussion, the judgement of 18 January 2024 assumes a paradigmatic status: not only with regard to the Court's answer that an employer must arrange reasonable accommodations prior to cancelling a contract, but also in reaffirming the position that EU law pre-empts national law in areas where the latter is incompatible. The Court holds that automatic dismissal, without any form of individual assessment, stands contrary to the aim of professional integration for people with disabilities and overrides the principle of non-discrimination under Union law.

In conclusion, the case under consideration provides an important opportunity to reaffirm the direct effect of fundamental rights recognised at European level, particularly for people with disabilities and to urge the Member States

including Spain, to a full adaptation of its internal regulations. The ECJ's reference to reasonable accommodation obligations reinforces the idea that disability cannot be an automatic cause of exclusion from work but must be managed with flexibility and inclusion tools. The judgment is therefore not only a legal answer to a specific question, but also an important step in the process of building a truly inclusive European labour market.

Chapter 3

Chapter 3 aims to critically analyse the judgment of the Court of Justice of the European Union in case C-631/22 - Ca Na Negreta, with particular reference to the impact on labour law and the protection of the rights of persons with disabilities. The ruling is made in a legal context marked by a profound dissonance between Spanish domestic law – which provides for the automatic termination of the relationship in case of total permanent unfitness – and the obligation of Union law to ensure inclusion in employment through reasonable accommodation measures. The Court has clearly stated that legislative automatism is incompatible with Art 5 of Directive 2000/78/EC, by requiring an individual assessment of the possibility of keeping the disabled worker on the company staff.
The chapter is divided into three sections. The first examines the direct effects of the judgment on national law and the need for legislative reform consistent with EU principles. The second focuses on the application risks for employers, between onerous measures and uncertainty in case law. Finally, the third section examines the central role played by national courts in the non-application of incompatible internal rules and in ensuring the effectiveness of fundamental rights recognised at European level.

3.1 Explanation of all positions taken on the judgment

The judgment delivered by the Court of Justice of the European Union in Case C-631/22 is a landmark in the interpretation of the rights of persons with disabilities within the sphere of the employment relationship. The case arose from a tension in the Spanish legal system, brought forth in the reference for a preliminary ruling by the national court and – in turn – addressed by the Court in an attempt to redefine the boundaries of legislative discretion of the Member States versus those imposed by EU law on matters of non-discrimination. This paragraph gives an overview of the different positions taken during the proceedings, examining national rules, the approach of the referring court and the final orientation adopted by the Court.
At national level, the Spanish legislation allows for the automatic termination of employment if it is established that a worker is permanently and totally unfit to carry out his duties. This mechanism – provided for in article 49 paragraph 1 of the Workers' Statute and supplemented by the provisions of the General Law on Social Security and the General Law on the Rights of Persons with Disabilities – is based on a traditional model oriented more towards economic protection – through the provision of benefits – than to active inclusion in the world of work. Once the permanent unsuitability has been recognised, the employer may withdraw from the contract without any obligation to make an individual assessment or seek alternative solutions. It is therefore a formal

and rigid approach, in which the certified clinical condition is sufficient to justify the termination of the contract.
The national court which referred the preliminary questions to the Court of Justice was of a different opinion, pointing out that there was a possible conflict between this automatism and the guarantees provided by EU law. Specifically, the court noted that in this particular case the worker – although declared unfit for the original duties – had previously been relocated to another position compatible with his conditions. This raised the question whether failure to assess a possible adaptation would constitute a breach of the reasonable accommodation obligation laid down in Directive 2000/78/EC, as well as of the principles of equal treatment and non-discrimination. The questions referred for a preliminary ruling focused on the compatibility of national legislation with those obligations and on the possibility that the dismissal in question constituted a form of indirect discrimination based solely on disability, in the absence of a concrete assessment.
The Court of Justice replied by stating clearly that automatic dismissal without prior consideration of reasonable accommodation is contrary to EU law. The Court pointed out that the employer is obliged to carry out an individual assessment – on a case-by-case basis – in order to ascertain whether there are measures which would enable the worker to retain his employment, even in jobs other than those originally held. Only if such measures entail a disproportionate burden may the withdrawal be considered to be lawful. The Court has also clarified that the payment of an economic compensation does not relieve the employer from the obligation to ensure effective respect for anti-discrimination rights. Finally, he rejected the assimilation made by Spanish legislation between permanent unfitness and absolute inability to work, reaffirming the need for a flexible and personalized approach. In conclusion, the positions taken in this case reflect a normative and conceptual evolution: from a national model focused on passive protection to a European perspective based on active inclusion, proportionality and reasonable adaptation. The judgment makes clear that disability cannot justify dismissal and that the protection of the rights of persons with disabilities requires concrete and proportionate examination in each individual case.

3.1.1 Spanish regulatory framework: automatic termination of the contract in case of total permanent incapacity

In the context of Spanish law, the termination of the employment contract in case of a worker's disability is regulated by an articulated normative system, based mainly on three sources: the Workers' Statute, the General Social Security Law ('LGSS') and the General Law on the Rights of Persons with Disabilities and their Social Inclusion. These legal instruments – although they refer to the need for adaptation in order to promote equality – also provide for provisions which legitimize automatic termination of employment in situations of permanent unfitness, without requiring an individual assessment of the possibility of continuing work in an adapted form. The Workers' Statute,

in the text resulting from Royal Legislative Decree 2/2015[30], establishes in article 49 – paragraph 1– that the employment contract is automatically terminated in case of death of the worker, permanent unfitness requiring the assistance of a third party, or in the presence of a total or absolute permanent unfitness. This provision – which is of a general nature – does not impose on the employer any obligation to make a concrete assessment of the worker's personal conditions or possibilities for re-employment. Certification of the medical condition alone is sufficient reason to terminate the contract. Rodríguez (2024) observes that the Spanish legislation allowing the dismissal of a worker with permanent disability, as provided for in Article 49.1 of the Workers' Statute, would be incompatible with Directive 2000/78/EC of the European Parliament and of the Council, thus highlighting a potential conflict between national law and obligations under EU law.[31] The notion of permanent unsuitability is elaborated in the LGSS, in the text approved by Royal Legislative Decree 8/2015[32], Article 193 defines permanent unfitness as the situation in which a worker – despite having completed the prescribed medical treatment – has serious anatomical or functional impairment that is objectively detectable and foreseeable to be definitive, such as to reduce or cancel his working capacity. Furthermore, it should be noted that the possibility of recovery of working capacity does not automatically exclude recognition of unfitness if this possibility is uncertain or placed in the long term. The medical assessment is therefore central and prevalent and the clinical judgement – once confirmed – has direct legal consequences on the employment relationship. Article 194 of the same law classifies permanent unfitness in four degrees: partial, total, absolute and that requiring the assistance of a third. The distinction is based on the percentage of reduction in working capacity and its incidence in relation to the job or occupational group. In particular, the total permanent unfitness at the heart of the dispute in Case C-631/22 refers to the condition where the worker is no longer able to carry out his usual occupation but may still be fit for other work activities. However, this does not affect the legality of the automatic termination of the contract provided for in the Employees' Statute. In economic terms, the third paragraph of Article 196, paragraph 2, of the LGSS provides that a worker who is recognized as being permanently unfit for work due to a non-occupational disease is entitled to a monthly allowance which may not be less than 55% of the minimum contributory base, calculated annually. This forecast confirms a regulatory approach geared towards com-

[30] The Royal Legislative Decree 2/2015 is the legislative text that approves the consolidated text of the Workers' Statute in Spain. It is a fundamental law of the Spanish labor law that regulates the rights and duties of workers and employers. This decree has systematized and updated the previous provisions on labour.

[31] RODRÍGUEZ (2024).

[32] Royal Legislative Decree 8/2015 approves the consolidated text of the General Law on Social Security in Spain. Collects and coordinates legislation relating to social protection, including pensions, invalidity and health care. Serves as the main reference for the Spanish social security system.

pensating for job loss through economic benefits, rather than ensuring continuity of employment through labour inclusion measures. Complementing the legal framework are the provisions of the General Law on the rights of persons with disabilities and their social inclusion, approved by Royal Legislative Decree 1/2013[33]. Article 2 of that law sets forth the concept of "reasonable solution," considered to be those adaptations of the physical and social or working environment which are necessary and appropriate to enable accessibility and participation of persons with disabilities, provided that they do not impose a disproportionate or undue burden. The definition is formulated in such a way as to make such solutions applicable in all areas of social life –including workplaces – and represents an important principle in comparison with the automatic termination system provided for by the Statute. The same law – in article 4 – extends the concept of a person with disability to include not only those who have physical, mental, intellectual or sensory disabilities that are allegedly lasting but also those who have a reduction in working capacity. In particular, it is expressly recognized that workers registered with social security and entitled to an allowance for total, absolute or permanent unfitness or with the need for assistance from a third party, must be considered persons with disabilities in all respects. This is an automatic recognition, which extends the legal protections provided for disabled people also to those who – according to the LGSS – are in conditions of unfitness for work. Article 40 of the same law introduces an obligation for employers to take appropriate measures to ensure equality in employment. Such measures should consist of adapting the workplace and improving accessibility to meet the specific needs of the person with a disability, provided that they do not place an undue burden on the undertaking. The possibility of obtaining public aid, economic costs and size of the firm should be taken into account when assessing whether the costs are high. The standard is therefore flexible, making the employer responsible for the need to find customized solutions before excluding a disabled person from the work environment. Finally, Article 63 states that the right to equal opportunities is violated in all cases where discrimination – direct or indirect – against a person with disabilities occurs also by failing to fulfil the obligations of reasonable accommodation. The law expressly recognises that failure to implement adaptation measures constitutes a legally relevant and punishable violation, comparable to other forms of discrimination. Overall, the Spanish legal provisions outline a dual and partly contradictory system. On the one hand, the implementation of labour law – through the Statute and the provisions of the LGSS – admits and normalizes the automatic termination of the contract in the presence of permanent inaptitude, in a logic of assistance and economic protection. On the other hand, disability legislation introduces principles of adaptation, inclusion and proactive obligations for the employer, which seem to be incompatible with the automatism provided by the Statute.

[33] Royal Legislative Decree 1/2013 approves the consolidated text of the General Law on the Rights of Persons with Disabilities and their Social Inclusion in Spain. Brings together and updates the rules on equal treatment, accessibility and integration into work of people with disabilities. It is the main Spanish legal instrument on disability.

It is precisely this internal tension in Spanish law that led the national court to raise the preliminary question before the Court of Justice of the European Union, giving rise to the case Ca Na Negreta (C-631/22).
"convierte la discapacidad del trabajador en una "causa de despido, sin que el empresario esté obligado, con carácter previo, a prever o mantener ajustes razonables para permitir a dicho trabajador conservar su empleo, ni a demostrar, en su caso, que tales ajustes constituirían una carga excesiva"[34].

3.1.2 Preliminary questions referred by the national court: doubts as to compatibility with EU law

The question referred to the Court of Justice of the European Union in case C-631/22 - Ca Na Negreta arises from a conflict between Spanish national law – which provides for the automatic termination of the employment contract in case of recognition of total permanent unfitness – and European Union law – which protects the principle of equal treatment in employment – prohibiting discrimination on the basis of disability. The specific case concerns a worker – J.M.A.R. – employed as a driver by the company Ca Na Negreta, who was declared permanently unfit for duty following an accident at work, while remaining able to carry out other tasks than his usual occupation. Nevertheless, the company automatically terminated the contract by applying Article 49, paragraph 1, letter e) of the Spanish Workers' Statute. The worker appealed against this decision, arguing that the undertaking should have considered whether a reasonable adaptation of his duties could be made, as he had done before when he was reassigned to a job more compatible with his physical condition. As noted by BAO García (2024) , the Court's approach is based on a perspective of substantive protection which goes beyond mere regulatory formalism[35].
The Tribunal Superior de Justicia de las Islas Baleares admitted the case for hearing – and subsequently – for the purpose of a preliminary ruling, referred two questions to the Court of Justice of the European Union. The referring court observed that – in this case – the total permanent unfitness did not prevent the worker from continuing to serve in another position. However, the Spanish legislation – not updated in the light of Directive 2000/78/EC – allows the employer to terminate the relationship without considering alternative solutions. According to the national court, this raises the question whether the national legislation may violate the obligation under EU law to take "reasonable accommodation" in order to enable a person with disabilities to keep his or her job. The first question is whether – in the light of the Charter of Fundamental Rights of the Union and the UN Convention on the Rights of Persons with Disabilities – Article 5 of the directive, prevents the application of a national rule providing for automatic termination of the contract on the ground

[34] GARCÍA (2024: 197).
[35] GARCÍA (2024: 196).

of total permanent unsuitability, without the undertaking having first assessed and adopted the reasonable accommodation provided for by Union law. The Spanish court pointed out that – in this particular case – the company had already reassigned the worker to a compatible job and that alternative solutions were therefore possible and feasible.

The second preliminary question concerns the possible configuration of direct discrimination. The court questioned whether the automatic termination of employment – in the absence of any prior assessment of suitability for another job – constituted a form of discrimination based on disability, in breach of the principles of equal treatment. The main doubt is that Spanish law allows termination for disability without any prior obligation to adapt and without any requirement to demonstrate the disproportionate cost of such adaptation.

In the light of these misunderstandings, the referring court expressed the need to clarify whether the mere payment of a social security benefit – linked to the condition of unfitness – is sufficient to exempt the employer from the obligations laid down by the directive, whether the procedure for assessing and implementing reasonable accommodation should be followed in any case.

A further aspect noted by the national court is the lack of updating of Spanish legislation in relation to the evolution of European anti-discrimination law. In particular, it is pointed out that the internal provision – which dates from more than forty years ago – does not take into account the need to preserve the employment of persons with disabilities through concrete and individualized measures, nor does it provide for an obligation to justify the impossibility of relocating.

The judge of the Balearic Islands also recalled the jurisprudence of the Court of Justice, in particular the judgment HR Rail (C-485/20)[36], in which it was clearly stated that the adoption of reasonable arrangements represents a positive obligation for the employer, not subordinated to the worker's request but integrated into the principle of equality itself[37]. This reinforced the suspicion that the Spanish legislation – providing for the automatic termination of the contract without such assessment – could be incompatible with EU law.

In summary – through the reference for a preliminary ruling – the national court asked the Court to clarify whether a dismissal based solely on the recognition of total permanent unfitness – and therefore on an established disability – could be legitimate in the absence of any consideration or concrete effort to maintain employment of the worker in an adapted form. The question – in other words – concerns the boundary between lawful termination and indirect or systemic discrimination, which occurs when the employer does not take

[36] The HR Rail judgment (C-485/20), delivered by the Court of Justice of the European Union on 10 February 2022, has clarified that an illness or disability that prevents a worker from performing essential tasks does not automatically justify dismissal. The Court established an obligation for the employer to take reasonable steps, such as transfer to another compatible post. The decision reinforces the principle of non-discrimination on grounds of disability under Directive 2000/78/EC.

[37] Judgment *J.M.A.R. v. Ca Na Negreta SA.*

into account the specific needs of the disabled worker even if reasonable solutions have already been successfully tested. The national court thus underlines a fundamental principle: it cannot be the disability in itself that legitimizes the termination of the relationship but an assessment is necessary on a case-by-case basis, according to criteria of proportionality, reasonableness and sustainability. In the absence of such an assessment, dismissal risks becoming a discriminatory act even though it is formally based on an apparently neutral national rule.
This question has given the Court of Justice the opportunity to further clarify the scope of the obligation to accommodate and to reaffirm the orientation already expressed in previous judgments, thus contributing to the construction of a European labour system based on effective rights and inclusion of people with disabilities.

3.1.3 Position of the Court of Justice: need for individual assessment before termination of the relationship

In its judgment of 18 January 2024 – Case C-631/22 - Ca Na Negreta – the Court of Justice of the European Union stated clearly and unequivocally that the automatic termination of the employment contract – as a result of the recognition by the Spanish social security system of a total permanent unfitness – is incompatible with EU law, where the employer has not previously considered or adopted reasonable arrangements as provided for in Article 5 of Directive 2000/78/EC. This ruling – which is in line with the well-established case law of the Court on non-discrimination based on disability – marks an important turning point for labour law and the protection of fundamental rights of people with disabilities. Rodríguez (2024) points out that the ECJ's interpretation of the concept of disability reinforces the obligation for employers to take reasonable measures in the event of any significant functional limitation[38]. The Court of Justice has held that Article 5 of the directive – read in the light of the Charter of Fundamental Rights of the European Union and the UN Convention on the Rights of Persons with Disabilities – imposes a precise obligation on the employer: to assess – on the basis of the circumstances of the particular case – whether there are reasonable and proportionate measures which would allow the disabled worker to retain his or her employment even if in other jobs than those originally held. Such measures shall be implemented unless they impose a disproportionate burden on the undertaking. Garcia says: "convierte la discapacidad del trabajador en una 'causa de despido, sin que el empresario esté obligado, con carácter previo, a prever o mantener ajustes razonables para permitir a dicho trabajador conservar su empleo, ni a demostrar, en su caso, que tales ajustes constituirían una carga excesiva'"[39].

[38] RODRÍGUEZ (2024).
[39] GARCÍA (2024: 197).

In the specific case, the Court found that the worker – J.M.A.R. – despite having been recognised as permanently unfit for his usual occupation, had actually worked for more than a year in an alternative position at the same undertaking, in a role compatible with its physical limitations. This factual fact – which was considered decisive by the European judges – demonstrated the practical feasibility of the settlement and made even more serious – from the point of view of Union law – the subsequent dismissal carried out by the company on the basis of regulatory automatism alone.

"Serán, pues, los jueces nacionales quienes habrán de apreciar en el caso concreto la adecuación de una medida determinada, así como la carga que esta pueda representar para la empresa"[40].

The Court also stated that the obligation to take reasonable measures does not end when a disability benefit is recognised. The mere receipt of an economic allowance, such as that provided for in the Spanish system for workers with total permanent incapacity, cannot relieve the employer from the obligation to respect the anti-discrimination rights guaranteed by the directive. According to the Court, such an automatism renders meaningless the useful effect of Article 5 of the Directive itself and is liable to encourage the systemic exclusion of persons with disabilities from the labour market, in direct conflict with the aims of European law. In this regard, Spanish legal interpretation underlines that national legislation equates permanent incapacity—whether total, absolute, or amounting to major disability—with the condition of disability as defined by EU law. Consequently, workers in such situations must be regarded as falling within the personal scope of the Directive. It follows that the employer's duty to implement reasonable accommodations cannot be dismissed solely on the grounds that the worker has been granted a disability pension[41].

The Court of Justice has also stressed that the concept of disability – for the purposes of the Directive – does not mean total incapacity for work but includes any lasting limitation which – in combination with environmental or organisational barriers – prevent full and effective participation in working life on an equal basis with other workers. It follows that the total permanent unsuitability for a specific job – such as that of driver in this particular case – does not in any way exclude the possibility of maintaining employment in alternative roles where reasonably possible.

In reaffirming the principle of individual and case-by-case assessment, the Court has made it clear that the Directive does not allow rigid or formalistic interpretations which neglect the concrete possibility of reintegrating or relocating the worker. The balance between the needs of the enterprise and the rights of the worker must be carefully calibrated, taking into account, inter alia, the size and economic capacity of the employer, and the availability of vacancies compatible with the worker's profile. As Rodríguez (2024) argues,

[40] SAHÚN (2024: 24).

[41] MOSTEIRO (2024).

this necessarily implies overcoming a passive attitude on the part of the employer towards disability, and instead adopting a participatory and proactive approach aimed at facilitating inclusion through reasonable accommodation[42].
The Court's position is fully consistent with what is stated in according to which Union law imposes a positive duty of inclusion and does not merely prohibit direct discrimination. Reasonable accommodation is not an option but a legal obligation, the omission of which – except in cases of disproportionate burden – may constitute a form of prohibited indirect discrimination.
The Court also condemned the assimilation made by Spanish law between total permanent unfitness and much more serious situations, such as the death of the worker or absolute unsuitability for any work activity. According to the Luxembourg courts, this equalisation fundamentally negates the principle of personalisation and adaptation which is at the basis of the directive. To equate the unsuitability for a single job with the permanent cessation of all employment opportunities violates the principle of proportionality and constitutes an unjustified obstacle to the integration into working life of persons with disabilities.
In conclusion, the Court held that Article 5 of Directive 2000/78/EC precludes national legislation allowing for the automatic termination of an employment contract without prior consideration of reasonable solutions and without the obligation to demonstrate that such measures are impossible or excessively onerous. This principle also applies fully in cases where the worker has acquired a disability during the employment relationship, such as in the case of Ca Na Negreta. The ruling therefore requires the Member States – and in particular the Spanish legislator – to adapt their internal rules so as to make them compatible with EU law. At the same time, it gives national courts the fundamental task of verifying in each individual case whether the guarantees provided for by the directive have actually been complied with.
Individual assessment before termination is no longer just an ethical or managerial option, but a precise legal obligation, the failure to comply with which may constitute a serious breach of EU law.

3.2 Court's interpretation

The Court of Justice of the European Union – in rendering its judgment on case C-631/22 – has provided a clear and thorough interpretation of the Union rules on the prohibition of discrimination on the grounds of disability, thus answering the preliminary questions put forward by the Spanish court and laying down principles binding on all Member States. In particular, it interprets the said Directive 2000/78/EC Article 5 with the meaning that it prohibits national legislation which permits the automatic dismissal of a worker who has been declared permanently unfit *vis-a-vis* the permanent dismissal of those workers who have been declared unfit for work by reason that no

[42] RODRÍGUEZ (2024).

preliminary examination has taken place of whether reasonable accommodation – particularly at the workplace – can be provided for such workers. The ultimate objective of the directive is active facilitation of persons with disabilities in the labour market; it is in reference to that objective that the obligations of an employer should be read. In answering the questions posed for preliminary rulings – the Court has indicated that national legislation – although relating to the social security system, could not derogate from any obligations having the force of law in the Union. The mere finding of unfitness – even if total and permanent – cannot automatically justify termination of the contract unless it has been demonstrated that reasonable measures to keep the worker in employment would not be possible or would have been excessively burdensome. The Court emphasised the need for an individual assessment – case by case – taking into account the specific characteristics of the worker, the available tasks and the conditions of the undertaking.
A central part of the Court's reasoning concerns the broad interpretation of the concept of "disability". It includes all long-term physical, mental or psychological limitations that hinder full and effective participation in working life on an equal basis. Consequently, workers recognised as being permanently disabled – even if only in respect of a specific task – fall within the scope of protection of the directive. This is also the case when such a condition results from an accident or illness occurring during the employment relationship, as in the present case. Finally, the Court stated three basic principles. First, it confirmed the employer's obligation to take reasonable steps where this does not entail a disproportionate burden. Secondly, it ruled out that the payment of a social security benefit could justify dismissal or discharge the employer from his obligations. Thirdly, he reiterated that inclusive measures are not a possibility but a necessary condition to avoid indirect discrimination based on disability. Compliance with the principle of equal treatment requires a substantive approach, not just a formal one, and requires active and personalised behaviour on the part of employers.
The judgment therefore has a direct impact on the Spanish law and – more generally – on the national laws of the Member States, imposing an adaptation of legislation and case-law consistent with the Union's principles on inclusion, reasonableness and non-discrimination.

3.2.1 Summary of the Court's reply to the preliminary questions

In the C-631/22 case – Ca Na Negreta – the Tribunal Superior de Justicia de las Islas Baleares sought a preliminary ruling from the Court of Justice of the European Union on the interpretation of Article 5 of Directive 2000/78/EC, relating to the principle of equal treatment in terms of employment and working conditions, especially with respect to disability. The issues concerned whether a national law allowing the automatic termination of the employment contract on the basis of a declaration of permanent unsuitability of the worker could be considered compatible with obligations under EU law, in particular the obligation to make "reasonable arrangements" beforehand. In this regard,

the Court held that "la causa de extinción del art. 49.1 e) del ET no puede ser admisible, por incompatible con el derecho de la Unión, si el empresario hubiera omitido su deber de analizar, intentar, ofrecer o mantener ajustes razonables"[43].

The Court answered the two questions by examining them together. In short, the Spanish court asked whether legislation allowing an employer to dismiss a worker on the sole ground that he has been declared permanently unfit for work was in conformity with the directive and the Charter of Fundamental Rights of the European Union carrying out their usual duties, without being obliged to check, before dismissal, whether the worker can be assigned to another job compatible with this or take alternative measures to ensure that he remains in service.

The Court answered in a clear and unequivocal way: such legislation is contrary to EU law. It held that Article 5 of Directive 2000/78, read in the light of Articles 21 and 26 of the Charter of Fundamental Rights of the Union and Articles 2 and 27 of the UN Convention on the Rights of Persons with Disabilities, oppose a national provision authorising the employer to dismiss a disabled worker on account of his permanent unfitness for work without first having considered and – where appropriate – taking reasonable measures. This applies even in cases of severe disability, where the employer must explore concrete and viable alternatives to dismissal before terminating the employment relationship[44].

In this case – the worker J.M.A.R. – after an accident at work, was initially reassigned to a job compatible with his new physical limitations. However, following the formal recognition of permanent unsuitability by the Social Security Institution – the company terminated its contract under Article 49 of the Spanish Workers' Statute – which allows for the automatic termination of the relationship in such situations. The Court pointed out that this automatism is at odds with the personalised and inclusive logic which inspires the directive, which requires a case-by-case assessment and the adoption of proportionate measures to ensure that disabled persons remain in employment.

Furthermore – according to the Court – it is not sufficient that termination be provided for by a national law, nor is it relevant that the worker has voluntarily requested recognition of his unfitness or that he receives a social security benefit. In fact, the payment of an economic allowance for physical condition does not exempt the employer from the obligation to comply with accommodation obligations. This is because the Directive – in its Article 5 – clearly states that employers must take the necessary measures to enable disabled people to work, unless such measures would entail a disproportionate burden. It is the employer's responsibility to demonstrate – if he wishes to waive this obligation – that the requested measure would have placed an excessive burden on the company's resources and size.

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[43] SAHÚN (2024: 24).

[44] MOSTEIRO (2024).

Another important aspect stressed by the Court is that total permanent unfitness – even if it concerns the specific job performed by the worker – does not amount to the inability to perform any work. Therefore, the employer cannot automatically assume that the employee should be laid off, but is obliged to check whether other compatible functions exist. In this particular case, the same firm had demonstrated that an arrangement was possible and functional by reassigning the worker to another job for more than a year.
The Court also found that the Spanish legislation equates disability with an objective cause for termination of the contract on the same level as death or absolute unfitness, without any individual assessment or obligation to state reasons. According to the Luxembourg courts, this mechanism is contrary to the very objective of the directive and to the principles of inclusion in working life enshrined in the Charter and the UN Convention.
In summary, the Court stated that Directive 2000/78/EC expressly prohibits any form of dismissal based on disability unless it is preceded by a concrete and personalised examination of the possibility of retaining the post through reasonable solutions. This obligation is all the more binding in that it expresses a substantial anti-discrimination logic – which does not just prohibit different treatments but requires positive – active and proportionate interventions to facilitate the integration of persons with disabilities into working life.
With this judgment, the Court has thus imposed an important constraint on national legislators and has strengthened the role of domestic judges in ensuring that the rights of disabled workers are effective. It also confirmed that the occurrence of a disability during the employment relationship cannot automatically justify termination of employment but imposes on the employer an active and responsible path of assessment, adaptation and inclusion. The Court's answer has the merit of translating a fundamental principle into legal law: disability can never, on its own, be a valid reason for exclusion from work.

3.2.2 Interpretation of the concept of "disability" in relation to total permanent incapacity

In the framework of the judgment C-631/22 Ca Na Negreta, the Court of Justice of the European Union has offered a significant clarification on the concept of "disability" under Directive 2000/78/EC, with particular reference to the situation of total permanent incapacity, the legal and physical status of the worker. The question was raised in the context of a reference for a preliminary ruling by a Spanish court, doubted the compatibility between national legislation – which provided for the automatic termination of the employment contract in the event of such unsuitability – and the obligations arising from Union law on non-discrimination.
The Court – in line with its case law and the EU legal framework – has reiterated that the concept of disability does not simply mean a clinical diagnosis or loss of working capacity in the absolute sense, it must be understood ac-

cording to a functional and social approach, consistent with the UN Convention on the Rights of Persons with Disabilities, also ratified by the European Union. More precisely, disability is a long-term physical, mental or psychological limitation that in interaction with behavioural or structural barriers hinders the full and equal participation of the person in professional life. In this context, it has been acknowledged that "el trabajador presenta la condición de discapacidad que constituye la característica personal protegida por la Directiva 2000/78" and that "todos los trabajadores declarados en dichas situaciones han de considerarse incluidos a priori en el ámbito de aplicación personal de la Directiva"[45].

In this case, the worker – initially employed as a driver – was declared permanently unfit for normal work following an accident at work. In Spain, this condition entails, according to the General Law on Social Security ('LGSS'), the right to a pension allowance and allows, according to Article 49 of the Workers' Statute, the automatic termination of the contract. However, the Court held that the condition of total permanent unfitness cannot be automatically excluded from the protection offered by Directive 2000/78/EC but must instead be included in the concept of disability, if – as was the case in this particular case – it has a long-term effect on the subject's work and professional participation.

In other words, the Court emphasised the criterion of duration and functional impact of the limitation, stating that what counts for the purposes of legal qualification as "disability" is not the objective gravity of the handicap, nor the absolute impossibility to work, the fact that limitation, as a result of existing barriers in the work environment, makes it more difficult or impossible for the person to continue working on an equal basis with others. It is therefore the effect of exclusion – and not the diagnosis – which is the determining factor. This perspective is entirely consistent with the inclusive logic underlying the Directive and with the aim of combating indirect discrimination and formally neutral but substantially excluding labour practices. In this particular case, the Court also took into consideration an important fact: the fact that the worker had already carried out for more than a year a task different from the usual one, compatible with its limitations. This showed that total permanent unfitness did not preclude the continuation of the employment relationship but only related to a specific function within a larger organization. In this way, the Court highlighted that incapacity with respect to a job does not exclude the possibility of reintegration into other functions, confirming the need to interpret disability in a dynamic and contextual way.

Another aspect on which the Court focused concerns the legal recognition of disability by the Spanish system itself. In fact, the Iberian legislation equates entitlement to an allowance for total permanent unfitness with the status of a person with disability. This means that – even from an internal point of view – the worker fell within the subjective scope of application of the anti-discrimination directive. The Court relied on this consistency of rules to maintain that

[45] SAHÚN (2024: 22).

a system which – on the one hand – recognises the status of disabled person and – on the other hand – allows for the automatic termination of the contract without any assessment of the accommodation obligation is not admissible.
The lesson to be drawn from this interpretation is clear: total permanent unfitness – if it entails lasting limitations on participation in employment – constitutes a form of disability which is legally relevant for the purposes of protection under EU law. Consequently, a person in that condition is entitled to protection against all forms of discrimination based on disability, even if it takes the form of an automatic practice provided for by national law. The protection in this case also extends to the employer's obligation to consider, assess and – if possible – take reasonable steps to keep the employee on duty before resorting to termination.
The Court thus reinforced an orientation already expressed in previous rulings – such as in HK Danmark and Ring – that disability is not a medical label in EU law but a relational concept, where external barriers and organisational practices play a decisive role in determining the actual disadvantage. In this light, the duty to provide reasonable accommodation must be interpreted within the broader objective of EU law, which is to ensure the effective integration of persons with disabilities into the labour market[46].
Ultimately, the judgment in C-631/22 contributes to consolidating a broad, concrete and protective reading of disability which aims to ensure not only the formal prohibition of discrimination but also the active and real inclusion of people with disabilities in the world of work. Interpreting total permanent unfitness as a form of protected disability, the Court calls on employers and national legislators to overcome any regulatory automatism and adopt a personalised, inclusive and responsible approach.

3.2.3 Established principles: obligation to take reasonable measures, assessment on a case-by-case basis, irrelevance of social security benefits, substantial anti-discrimination protection

The judgment of the Court of Justice of the European Union in case C-631/22 - Ca Na Negreta is of fundamental importance for the affirmation and concretization of a number of key legal principles on non-discrimination based on disability. In particular, the Court clarifies four key elements of the interpretation of Directive 2000/78/EC: the obligation to adopt reasonable arrangements, the need for a case-by-case assessment, the irrelevance of the provision of social security benefits with respect to this obligation, finally, a substantive vision of anti-discrimination protection. These elements are central to ensuring effective equal treatment in the world of work. The Court stresses once more that it is an obligation for the employer to take "reasonable arrangements" in accordance with Article 5 of Directive 2000/78. This entails the measures needed to adapt the workplace to the disabilities of a person, so he or she can perform under own merit or carry out new activities, save where

[46] MOSTEIRO (2024).

such measures would impose a disproportionate burden on him. Examples of such arrangements are changes to duties, reassigning to other compatible tasks, flexible working hours, and the adaptation of work tools.
In this particular case, the employee was declared permanently unfit to perform his original job but had already demonstrated that he could successfully be employed on an alternative assignment at the same company. The Court held that the possibility of such redeployment, which was not only theoretical but had already been implemented in practice, made it particularly serious for the employer to fail to do so, since he had nevertheless made the dismissal on the basis of an automatism provided for by national law, without considering the option of keeping the worker in another job. This is precisely where the Court finds that there has been an infringement of Article 5 of the directive: it is not admissible that – in a system based on equality – the condition of disability is treated as an automatic cause for termination without a concrete verification of the alternatives available.
The second principle stated by the Court is that of individual assessment, case by case. The Court stresses that respect for equal treatment requires avoiding any automatic process and carrying out a personalised examination of the disabled worker's conditions, his real residual capacity, the possibilities of workplace adaptation and available organisational solutions. It is not a question of imposing impossible or unsustainable solutions on the company, but of requiring a reasonable effort of inclusion, consistent with resources, size and operating environment.
The principle of individual assessment represents a departure from the impersonal and uniform logic which has often characterized national legislation on termination for health reasons. The objective of EU law – on the other hand – is to ensure that each worker is considered in its uniqueness, by exploiting remaining capacities and not focusing solely on limitations. In this sense, the Court imposes on employers an active duty of analysis and not a mere discretionary power.
A further clarification offered by the Court concerns the irrelevance of the receipt of a social security benefit in relation to the fulfilment of accommodation obligations. The adoption of reasonable adjustments cannot be regarded as a discretionary measure, but rather as an essential component of the right to inclusion of persons with disabilities in working life[47].
The Spanish legislation – as pointed out in the case – provided that recognition of total permanent unfitness gave entitlement to an allowance and, at the same time, legitimized the automatic termination of the employment contract. The Court – however – stated that the payment of a social security benefit cannot in any way replace or neutralise the employer's legal obligation to examine and adopt reasonable alternative solutions. Economic protection – in fact – relates to the welfare and social security plan, while anti-discrimination protection has a different and autonomous nature: it aims at ensuring effective social inclusion and employment, not passively compensating for exclusion.

[47] MOSTEIRO (2024).

Finally, the Court affirms a substantial conception of the principle of non-discrimination, which is not limited to prohibiting blatantly unfair treatment but imposes active conduct and positive measures to remove obstacles to the full participation of persons with disabilities. From this perspective, discrimination is not only direct pejorative treatment but also the failure to adopt inclusive measures such as reasonable accommodation where these are possible and sustainable. Protection against discrimination on the basis of disability cannot therefore be interpreted in a reductive or formal way but must be implemented in its substantive dimension as an instrument of concrete rebalancing of the starting conditions. This view is consistent with the established case-law of the Court – but also with the obligations arising from the Charter of Fundamental Rights of the European Union and the UN Convention on the Rights of Persons with Disabilities – requiring Member States and private actors to promote the integration and full inclusion of people with disabilities in social and working life. It is from this perspective that the Court finds incompatible with EU law national legislation which allows the automatic dismissal of a disabled person without prior assessment of the possibility of taking reasonable adaptation measures.
In conclusion, in its judgment in C-631/22, the Court of Justice has clearly and authoritatively stated four basic principles: the employer's obligation to take reasonable measures, the need for an individual assessment of the possibilities of inclusion, the autonomy of anti-discrimination protection in relation to social security protection and the centrality of a substantial vision of the principle of equality. These principles enhance the effectiveness of EU law and are an essential reference for national courts in similar cases. They also impose on state legislators the obligation to adapt their internal regulations in order to remove any automatism that results in discrimination, even indirect, based on disability.

3.3 Critical analysis

The judgment of the European Court of Justice (ECJ), C-631/22 – Ca Na Negreta, is a landmark step in the development of European discrimination law, especially with regard to employment rights for persons with disabilities. Not only does it strongly reaffirm the essential principles of Directive 2000/78/EC and of the Charter of Fundamental Rights of the European Union, but it also calls for changes in national legal systems still steeped in rigid, outdated legislative frameworks. Hereunder, the case defines three fundamental issues with important legal, political, and operative implications: the need for reform of the regulatory framework at the national level, practical obstacles from the perspective of employers in realising the accommodation obligations, and the opposing view of national courts as a key element in the implementation and enforcement of Union law.
First, the Court's judgment revealed a fundamental structural incompatibility between Article 49 of the Spanish Workers' Statute and the European ap-

proach to inclusive labour law. The challenged provision provided for automatic termination of the employment relationship as soon as permanent total incapacity of a worker was recognised. No consideration whatsoever was given as to whether the worker could continue to be employed with reasonable accommodation. By contrast – the Court rejected this approach as incompatible with EU law in the strict sense of Article 5 of Directive 2000/78/EC – which imposes a duty to take appropriate measures unless such measures impose a disproportionate burden. Therefore, the judgment clearly calls the Spanish legislature to undertake a total overhaul in terms of abolishing automatic mechanisms in favour of a tailored individualised approach. This analysis – therefore – begins from an exploration of the consequences of the judgment on national legislation and the fervent need for reform to bring domestic law in line with the ever-evolving European legal framework.

Secondly – while strengthening the rights of persons with disabilities and advancing the principle of inclusion without doubt – the Court's interpretation gives rise to uncertainty and concern from the employer's standpoint. Obligations to consider and effect reasonable accommodation measures prior to termination have obvious financial consequences and could be a major organisational inconvenience, particularly to small-to-medium enterprises. Also, the absence of clear, harmonised standards upon which to judge what constitutes a "disproportionate burden" compound the difficulty in applying these obligations and might cause . Employers are now expected to operate without the benefit of fixed legal thresholds or state-supported guidance, making the new framework not only more demanding but also risk-laden. This second section delves into these application risks, examining the balance between the strengthening of anti-discrimination protections and the need to ensure that these obligations remain viable and sustainable for economic actors.

Third and finally, the judgment highlights the increasingly crucial role of national courts in safeguarding fundamental rights in the absence of immediate legislative intervention. By reaffirming the duty of national judges to disapply domestic provisions that conflict with Union law, the Court strengthens the procedural and substantive responsibilities of the judiciary. Judges are not merely called to interpret law, but to ensure the practical enforcement of rights rooted in the Charter and the directive. The CJEU's reasoning implicitly calls for a proactive and dialogic relationship between national and European courts, with the former assuming the role of frontline guarantors of equality and inclusion. This aspect – explored in the final part of the analysis – underscores how legal change in the European Union increasingly stems from judicial action rather than legislative initiative and how national courts are called to act both as interpreters of proportionality and as enforcers of substantive equality.

In conclusion, the Ca Na Negreta case represents much more than a doctrinal clarification: it is a constitutional moment in European social law, demanding a systemic recalibration of how disability, inclusion, and labour relations are understood across Member States. Through the following three subchapters, this critical analysis aims to explore the full legal and practical impact of the

ruling, with an emphasis on the intersection between supranational obligations, domestic legal reform, and the operational realities of employers and judges alike.

3.3.1 Effects on national law: regulatory reform needed

The ruling of the Court of Justice of the European Union in case C-631/22 Ca Na Negreta highlights in a clear and systematic way the incompatibility between the Spanish legislation on termination of employment and the fundamental principles of EU law, in particular those contained in Directive 2000/78/EC. According to the Court – the Spanish legislation – in so far as it allows the employer to terminate the contract automatically following recognition of the worker's total permanent unfitness, is in clear breach of the obligation to make reasonable prior arrangements.
The national rule in question is contained in Article 49 of the Workers' Statute, which provides for termination of the contract in case of death, permanent total or absolute unfitness, as well as unsuitability involving the need for assistance by third parties. This provision in no way provides for an obligation on the employer to assess – even only preliminarily – whether it is appropriate to relocate the worker to alternative jobs or adapt working conditions, in accordance with Union law. It is a rule conceived at an earlier time than the adoption of Directive 2000/78 and which – as observed by the referring court – has never been amended or harmonised with EU legislation and case-law. This fact enabled the Court to highlight the antiquated nature of the Spanish labour law system in this respect and its inadequacy with regard to the obligations arising from the principle of non-discrimination.
The direct effect of the Court's ruling is to impose a legislative revision of the Spanish national law. The current legislation – based on rigid and impersonal automatisms – denies any relevance to the specificity of the specific case and is in direct contrast with the individualised assessment model and the flexible and adaptive approach required by the directive. The automatic termination of the relationship – in the absence of a prior analysis of the disabled person's conditions and organizational possibilities – completely empties the obligation to take reasonable measures and renders ineffective the entire anti-discrimination system provided for by EU legislation.
In particular, the Court pointed out that the payment of a social security benefit following recognition of unfitness cannot in any way replace or exempt the employer from compliance with the obligation to adapt. The social security system and the anti-discrimination system follow different logics: the first aims to guarantee economic support, while the second is oriented towards preserving employment and active integration of the person in the world of work. The Spanish legal system – as it stands at present – confuses these two plans and accepts that the payment of an economic benefit may legitimise termination of employment without further assessment, thus undermining the effectiveness of the protection provided for persons with disabilities.

The Court then pointed out that – in the absence of a legislative reform – Spain is exposed to the risk of systemic infringement of EU law – with consequences which may be reflected both at the level of domestic litigation – in the event of a default action under Article 258 TFEU. The automatic nature of the Spanish legislation does not take into account the real possibility that a disabled worker – although no longer fit to perform his original job – may continue to work in different jobs compatible with his condition. This is precisely the element which the Court has found to be central: Union law imposes a positive duty of adaptation and does not allow dismissal to take place without having demonstrated that the necessary arrangements are indeed impractical or excessively burdensome.
In this particular case, the possibility of accommodation had even been implemented in the past, since the worker had been reassigned to an alternative role for more than a year after the accident. Nevertheless – the employer terminated the relationship on the basis of the national standard – without taking into account the specific situation and without giving any reason as to why it was impossible to maintain that arrangement. This shows how the current Spanish regulatory framework not only allows but encourages discriminatory practices, formally legitimized by provisions that are contrary to EU law.
The judgment ultimately requires Spanish law to carry out a comprehensive review of the legal regime governing the termination of the relationship in cases of permanent unsuitability. This review should eliminate any automatism and introduce a general obligation for the employer to carry out an individual assessment, supported by appropriate documentation, the possibility of keeping a disabled worker in the service through reasonable arrangements. Only if such solutions are impossible or disproportionate, it will be admissible to proceed to the resolution of the report. The implementation of this reform will be essential to ensure the full effectiveness of the principle of non-discrimination and to bring national law into line with binding legal obligations arising from EU law.

3.3.2 Application risks: onerousness and uncertainty for employers

The interpretation given by the Court of Justice of the European Union in its judgment C-631/22 Ca Na Negreta places at the centre of the debate not only the effective protection of the rights of persons with disabilities but also the operational consequences of such protection for employers. The obligation to assess and – if possible – take reasonable steps before terminating an employment relationship with a worker who has become unfit. It involves a profound transformation of the way in which the company must deal with disability in the workplace. This implies – on the one hand – an evolution towards a greater social responsibility of the company, but on the other hand it inevitably generates application risks, linked mainly to the onerousness of the measures and to the interpretative uncertainty.
The Court has clearly established that the employer cannot rely on automatic regulatory mechanisms, such as that provided for in Article 49 of the Spanish

Workers' Statute, to justify the termination of a worker's contract which has been declared permanently unfit. He is – however – obliged under Article 5 of Directive 2000/78/EC to check whether there are alternative solutions which, without imposing a disproportionate burden on him, would allow the worker to remain employed. However, the absence of rigid and predefined criteria for determining when a disproportionate burden becomes exposes undertakings to significant uncertainty. The assessment of the proportionality of the burden must take into account a number of factors, including the size of the undertaking, its financial resources, the type of activity carried out and the actual cost of the changes required. But the Court does not provide – in this judgment – any objective threshold or quantitative parameter which can guide employers' behaviour in a uniform manner.

The result is an application framework in which each situation must be assessed individually, with the risk that similar business decisions may receive different treatment in the courts, depending on the interpretation that each national court will give to the concept of "reasonableness" or "disproportionate burden". This interpretative uncertainty may lead to an increase in litigation, especially in legal systems where there is no established case law on reasonable accommodation. Employers could thus be exposed to legal action even if they have adopted a subjectively motivated assessment but not agreed by the court. Another source of difficulty stems from the fact that – in business practice –the possibility of identifying alternative jobs is not always clear or readily available. The employer should not only check for compatible jobs but also consider whether the employee's assignment to a new job alters the internal organisation, workloads or professional skills required. In the absence of specific indications, the obligation to relocate could be perceived as an organisational constraint requiring time, resources and structural adjustments. The Court – while admitting that it is possible for the employer to justify the omission of the arrangements if they entail an excessive burden – does not however define the concrete limits of such justification, leaving this assessment to the national courts.

In the case of Ca Na Negreta, the company had already reassigned the worker to a different job, demonstrating the practical possibility of accommodation. However, the situation does not always present itself with the same evidence or simplicity. In small firms or with highly specialized roles, finding compatible jobs may prove difficult. In these cases, the fear of violating anti-discrimination legislation, combined with the lack of a clear reference framework, can lead the employer to defensive behaviour, such as the forced maintenance of relationships that are now economically or functionally unsustainable, or, on the contrary, to lay-offs which are subject to legal action. To this is added the lack of a harmonised national system which assists employers in their task of achieving reasonable accommodation. In the judgment, the Court does not refer to state support measures, economic incentives or public instruments aimed at facilitating the re-employment of disabled workers. In the absence of such accompanying mechanisms, the burden of inclusion falls entirely on the

firm, which could perceive the obligation imposed by the directive as a unilateral burden not balanced by adequate public policies.
Finally, the absence of a well-established case law at national level may also contribute to increased uncertainty for employers. The Ca Na Negreta judgment comes in a context where Spanish legislation – dating from before the directive – has never been updated to incorporate its principles. This means that the Spanish employers – until now – have acted on the basis of a rule which legitimized automatic termination, without obligations for evaluation or adaptation. The impact of the judgment is therefore disruptive not only on the legal level but also on the operational level –as it imposes a significant cultural and organisational change – which requires time, training and interpretative support.
In conclusion, while the judgment strengthens the rights of people with disabilities and imposes a model of active inclusion, it also introduces new responsibilities and risk margins for employers, they must now operate in a context free of automatisms but full of application uncertainties. In order to ensure that the effectiveness of this new model does not rest solely on the company, it will be necessary to accompany the obligation of accommodation with clear regulatory instruments, Interpretative guidelines and support measures that translate the Court's principles into sustainable practice for all stakeholders.

3.3.3 Strengthening the principle of inclusion and enhancing the role of national courts

The judgment of the Court of Justice of the European Union in case C-631/22 - Ca Na Negreta represents an important step in strengthening the principle of inclusion of people with disabilities in the European working environment, and at the same time underlines in a decisive way the central role of the national court in the effective implementation of rights deriving from Union law. The Court confirmed that the European anti-discrimination law continues with the substantive and personalised approach when asked to rule on a Spanish law allowing the automatic dissolution of an employment contract if the workman is declared totally and permanently unfit for work. And the Court opposes any legislative automatism leading to the exclusion of vulnerable subjects from the world of work without proper and concrete verification of the other possible alternatives.
The Court went on to explain that Directive 2000/78/EC – in the light of the Charter of Fundamental Rights of the European Union and the UN Convention on the Rights of Persons with Disabilities – requires Member States to deliver the promise of effective equality of treatment, which cannot be reduced to a mere formal prohibition of discrimination. The employment inclusion of people with disabilities is a positive and concrete objective of EU law – which requires active measures by employers but also an attitude of vigilance and intervention by national courts – called on to disregard internal rules incompatible with fundamental rights recognised at supranational level. According to MLA Sahún (2024), the judge is not merely an enforcer of national

law but a guarantor of the effectiveness of European rights[48]. In this particular case, the Court has clarified that a law such as the Spanish law –which does not provide for any obligation to assess the possibility of retaining the disabled worker through reasonable accommodation – is contrary to Article 5 of the Directive and Articles 21 and 26 of the Charter. This implies that the principle of inclusion in working life is not achieved solely through the adoption of general rules but requires each individual case to be examined in the light of the specific needs of the person concerned, the possibilities of the undertaking and the proportionality of the measures required. This highly personalised approach places the worker at the centre of legal assessment and contrasts with the generalising logic of the provisions which assimilate unsuitability to automatic termination of employment, with no room for further considerations.

The Court also stressed that the role of the national court is crucial to ensuring the correct application of EU law, especially in cases where domestic legislation has not yet been updated. As BAO García (2024) points out, the case law of the Court of Justice strengthens the role of the national court as the first interpreter of the principle of proportionality[49]. The court must assess, on the basis of the circumstances of the case, whether the termination of the relationship occurred in breach of the accommodation obligation and whether failure to take reasonable steps constitutes discrimination based on disability. In the case of Ca Na Negreta – it was precisely the judge from the Balearic Islands who played this active role – raising the preliminary question and questioning the compatibility between the internal legal order and the principles of the Union. In this way, the national court acted as a direct guarantor of the protection of the fundamental rights of the worker, making effective the function of preliminary ruling as an instrument for legal dialogue between the courts of the Member States and that of the Union.

The enhancement of the role of the domestic judge also emerges from the fact that the Court does not impose an immediate reform of national law by the legislator, but stresses that – already under the Directive and the Charter – the court may and shall disapply the incompatible domestic rule. This strengthens the role of the judge as guardian of substantive equality, even in the absence of legislative intervention. The court is not merely an enforcer of domestic law but has a duty to ensure that it complies with binding obligations of the Union. In the case of legislation allowing automatic dismissal for unsuitability, without regard to the possibility of relocation, the court must therefore verify whether the undertaking has indeed considered reasonable accommodation and, Otherwise, the national provision shall not apply. The Court thus recognises that the effectiveness of the principle of inclusion is based on a twofold pillar: on the one hand, the positive obligation of the employer to encourage the disabled worker's continued employment by means of measures compatible with the company's organisation; on the other hand, the duty of the court to ensure that this obligation is fulfilled, ensuring that disability does

[48] SAHÚN (2024).
[49] GARCÍA (2024).

not become an indirect cause of exclusion from the labour market. In this sense, the judgment assumes a pedagogical and administrative function, since on the one hand it promotes a legal culture of inclusion, and on the other hand it offers the internal interpreters the tools to implement it concretely.
Finally, the Court's intervention is part of a broader case law which aims to build an inclusive European model of labour law based not on abstract assumptions, the concrete consideration of people and their potential. The strengthening of the principle of inclusion is therefore not a rhetorical formula, but translates into an enforceable legal obligation, which finds its first guarantor in the figure of the national court. The supervisory function of the judge, combined with the operational responsibility of the employer, forms the backbone of a system that aims to make the rights of people with disabilities effective not only on paper but in the daily functioning of the world of work.

Conclusion

The Ca Na Negreta judgment represents a turning point in the process of harmonising European labour law, especially as regards the protection of workers with disabilities. With it, the ECJ has affirmed a fundamental principle: disability cannot automatically justify dismissal unless all reasonable adaptation options have been explored and documented. This ruling requires a structural rethinking of national regulations which provide for automatic measures incompatible with the principle of equal treatment and the obligation to accommodate reasonable accommodation.
The impact of the judgment is threefold. At the regulatory level, it imposes on the Spanish legislator – and potentially also on other Member States – an adaptation that eliminates automatisms and introduces a general obligation of individual assessment. At the operational level, the decision highlights the practical difficulties for employers in balancing organisational needs with inclusive duties, without having uniform criteria or public support instruments at present. Finally, at the judicial level, the Court reaffirms the active role of the national court as the first guarantor of the effectiveness of Union law, authorised – and sometimes obliged – to disregard domestic legislation that is contrary to European law.
In summary, the chapter shows that the ruling is not limited to a mere censure of the Spanish legislation but constitutes a call to action for all actors of the European legal system: legislators, judges and employers. The future of anti-discrimination law on disability necessarily involves establishing a legal culture of active inclusion, flexibility and personalisation in which the person with disabilities is not a limitation to be managed, but a subjectivity to be protected and valued.

Conclusion

This thesis has addressed a topic of growing importance in the legal landscape of the European Union: the protection of people with disabilities in employment relationships and the concrete implementation of the principle of non-discrimination through legislative instruments, legal and political case law. The starting point of the survey was the recognition that – in order to be effective – equal treatment cannot be limited to mere formal equality but must be translated into substantive measures aimed at guaranteeing access, the continuing and career development of the most vulnerable.
In the course of the paper, it was demonstrated that disability should not only be considered as a personal condition from the perspective of EU law but also as the result of the interaction between individual limitations and environmental, social and organisational barriers. This approach – emblematically enshrined in the UN Convention on the Rights of Persons with Disabilities ('CRPD'), the Charter of Fundamental Rights of the European Union and Directive 2000/78/EC – imposes a proactive obligation on Member States and social actors: to create the conditions for effective inclusion, including through the adoption of reasonable arrangements. In this perspective, disability ceases to be a static and isolated characteristic of the individual, becoming the reflection of a society that decides – or not – to guarantee equal opportunities and accessibility. The analysis carried out in the first chapter has made it possible to reconstruct the evolution of European labour law, identifying the key steps that have led to the progressive affirmation of the principle of non-discrimination and the strengthening of the social dimension of the European project. In particular, it has been shown that European legislation has gone beyond a purely liberal approach to the labour market, to arrive at a conception in which the dignity of the person and inclusive participation become criteria for legislative and jurisprudential intervention. This change is part of a wider process of "constitutionalisation" of European social law, which aims to integrate economic objectives with those of equity and social cohesion. The second chapter focused on the C-631/22, paradigmatic case in which the Court of Justice of the European Union has had the opportunity to confront with a national legislation – the Spanish one – that legitimized the automatic termination of the employment relationship in case of recognition of permanent inaptitude total of the worker. By analysing the Spanish legal context, the individual case of the worker J.M.A.R. and the preliminary questions raised, it has become clear that the lack of an individualised prior assessment of alternative measures to dismissal constitutes a breach of European law. The Court has thus reaffirmed that the obligation to adopt reasonable arrangements cannot be circumvented by national legislative automatisms, since this would undermine the very substance of the principle of equality and the ultimate aim of the directive: promote the integration of people with disabilities into working life. The Court's decision therefore has a value not only in terms of case

law but also in educational terms, since it refers domestic systems to a responsible exercise of their regulatory autonomy in the light of the constraints arising from EU law.

The Ca Na Negreta judgment thus marks a moment of consolidation of interpretation of prime importance: the Court has clarified that Article 5 of Directive 2000/78 requires a concrete assessment on a case-by-case basis and that failure to comply with this obligation constitutes discrimination under Union law. In this sense, the principle of non-discrimination qualifies as a fundamental and horizontal principle capable of binding both Member States and private parties. In addition, the view that the full participation of people with disabilities in working life should be promoted through structural measures, which do not stop at merely recognising social security benefits, is confirmed, they must be translated into effective means of continuing to work.

In the third chapter, a broader reflection has been developed on the implications of this case law, both in terms of adaptation of national legislation and in an evolutionary perspective of EU law. It became clear that the Spanish case was not an isolated exception but a warning of a wider problem: the persistence of legal systems which – although inspired by protective aims – end up excluding people with disabilities from the labour market, rather than accompanying the inclusion. In this sense, the Court sees itself as a systemic corrective, capable of reorienting internal systems towards higher standards of protection. Moreover, it should not be underestimated that this European case-law constitutes a powerful incentive for national courts to value interpretation in accordance with EU law by reducing the gap between domestic legislation and European constraints. From a theoretical point of view, the paper also provided an opportunity to reflect on the contemporary meaning of the concept of equality in European law. Far from becoming a static category, equality is now manifested as a dynamic principle, requiring positive actions, organisational changes, and cultural change in the way disability is perceived and treated. It is in this sense that reasonable accommodation is no longer just a technical measure but becomes the legal instrument for implementing an ethics of inclusion. This vision also involves a redefinition of the very concept of productivity, which must consider the different ways in which people can contribute to the work environment, beyond traditional quantitative standards.

Another element that emerged from the investigation is the importance of dialogue between national judges and the Court of Justice through the reference for a preliminary ruling. This often underestimated instrument has proved essential to ensure a uniform interpretation of fundamental rights in the Union and to overcome the rigidities of national legal traditions. The Spanish judge's choice to raise the question of interpretation enabled a virtuous circuit of legal comparison to be activated, contributing to the progressive harmonisation of anti-discrimination law. It also strengthens confidence in the role of the European jurisdiction as the ultimate guarantor of social rights and an implicit invitation to national legislators to update their regulatory systems with greater responsiveness and consistency. At the end of the journey, it can be said that

the judgment in C-631/22 represents not only a landing point but also a starting point. It confirms the centrality of EU law in protecting the rights of people with disabilities and lays the foundation for further future developments. Among these, we can hope for a more incisive reform of national regulations, a greater spread of the culture of inclusion in the workplace and a strengthening of the enforcement tools available to workers to assert their rights. It is therefore necessary to strengthen not only the norm but also the legal culture so that the protection of disability does not remain confined to the courtrooms but becomes part of the organizational and management practice of companies.

From a practical point of view, the thesis highlights how the effective implementation of rights enshrined in European law requires a joint commitment by institutions, businesses and civil society. Standards – however advanced – are not sufficient if they do not go hand in hand with a real change in working practices and prevailing mentalities. Reasonable accommodation must become an ordinary practice, not an exceptional concession; diversity must be seen as a resource, not an obstacle; law must work not only to regulate but to transform. From this point of view, EU law is confirmed not only as a system of rules but also as a lever for social progress and inclusion. In conclusion, this thesis has shown that the European Union's labour law – through the elaboration of legislation and jurisprudence on the principle of non-discrimination – is one of the most powerful tools to guarantee inclusion, promoting social justice and protecting human dignity. The case of the worker J.M.A.R., and the answer of the Court of Justice, remind us that the law is not only technical, but also project of society. A truly European society, in the highest sense of the word: open, supportive and built around the centrality of the person.

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