Interfederaal Gelijkekansencentrum
Centre interfédéral pour l'égalité des chances
Interföderales Zentrum für Chancengleichheit

Recommendation (No. 420) of 25 June 2026

Introduction of *lack of accessibility as a specific form of discrimination* in anti-discrimination legislation

***'Accessibility' means appropriate measures to ensure that persons with disabilities have access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas* (Article 9 of the United Nations Convention on the Rights of Persons with Disabilities).**

Summary

Accessibility is essential to substantive equality and the effective exercise of the fundamental rights of persons with disabilities. Yet many instances of inaccessibility persist in Belgium: transport infrastructure that is only partially accessible, unsuitable buildings, digital tools that do not meet accessibility standards, and services that can only be contacted online.

Although accessibility obligations exist, the legal framework for non-discrimination does not allow a failure to ensure accessibility to be classified as discrimination. This limits the effectiveness of remedies in this area, both for persons with disabilities and for those acting in defence of the collective interest, such as Unia or organisations involved in promoting accessibility. Although the concept of indirect discrimination can address certain forms of collective exclusion, the rules governing its justification severely limit its scope in relation to disability. Consequently, courts mainly consider instances of inaccessibility from the individual perspective of denial of reasonable accommodation: an approach focused on the individual, limited in scope and subject to the disproportionate burden clause.

On the basis of the UN Convention on the Rights of Persons with Disabilities (CRPD) and Article 22*ter* of the Constitution, Unia considers that a lack of accessibility may constitute discrimination and therefore recommends that the authorities amend their anti-discrimination legislation to **explicitly recognise lack of accessibility as a specific form of discrimination**.

This recognition does not entail immediately bringing the entire existing built and digital environments and services into compliance. Its aim is to sanction the absence of sufficient, planned and progressive action on accessibility. An assessment of failure to ensure accessibility should take account, in particular, of efforts made, the existence of action plans, compliance with applicable standards and the time elapsed since those standards came into force.

Such legislative recognition would make it possible to treat inaccessibility as a structural failure to uphold fundamental rights, moving beyond an approach focused exclusively on individual situations. It would help strengthen the binding nature of existing accessibility obligations and complement policy initiatives aimed at adopting a legal framework for progressively making the built and digital environments and services accessible to persons with disabilities.

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1 Recipients

- Mr Rob Beenders, Federal Minister for Persons with Disabilities and Equal Opportunities
- Mr Yves Coppieters, Minister in the Governments of the French Community and the Walloon Region, responsible for equal opportunities and disability
- Mr Ahmed Laaouej, Brussels Minister for Equal Opportunities
- Ms Lydia Klinkenberg, Minister for Equal Opportunities and Persons with Disabilities in the German-speaking Community
- Platform of disability advisory councils (for information)
- Federal Institute for the protection and promotion of Human Rights (for information)
- Flemish Human Rights Institute (for information)

2 Background

In Belgium, accessibility difficulties are not isolated or occasional occurrences, but a structural problem. The UN Committee on the Rights of Persons with Disabilities (UN Committee), which monitors implementation of the CRPD, has repeatedly expressed concern about persistent barriers to accessibility and the lack of tangible progress.

In practice, infrastructure and services, some of them recently built or introduced, often fail to take account of the accessibility needs of persons with disabilities, while adaptation of the existing environment — built or digital — is progressing too slowly[1]. As a result, many persons with disabilities cannot fully exercise their fundamental rights.

Although progress has been made, it remains insufficient. This situation is due to a lack of resources, poor coordination among the many stakeholders concerned and, above all, an inadequate legal framework. Accessibility standards are too often not complied with[2], are subject to little oversight and are very rarely enforced through sanctions[3]. As a result, accessibility too often depends on the goodwill of authorities or operators rather than on a clear and robust legal framework.

In handling individual cases, Unia also finds that, despite Belgium's ratification of the CRPD, it remains difficult to obtain a court ruling recognising that an inaccessible place, public transport or service creates one or more instances of discrimination. This difficulty stems from a fragmented and insufficiently binding

[1] Belgium's progress on accessibility is difficult to measure because of the lack of reliable, regularly collected data. Nevertheless, the reports received by Unia and the results of its 2020 consultation on respect for the rights of persons with disabilities show that many difficulties remain. The limited data available confirm these findings: at the beginning of 2026, only 132 of SNCB's 555 stations were fully accessible; 30% of STIB stops were certified as accessible in 2022; and a study conducted by Collectif Accessibilité Wallonie Bruxelles (CAWaB) in 2025 found that independent boarding on the TEC network was unsuccessful in nearly one case in two (47.8%). As regards digital accessibility, between 2022 and 2024, 72% of the public-sector websites audited did not meet the applicable requirements, while none was fully compliant.

[2] See in particular: INTER (2020), '*Evaluatieonderzoek Vlaamse Toegankelijkheidsverordening*', available online at: https://inter.vlaanderen/sites/default/files/Evaluatieonderzoek_Vlaamse_Toegankelijkheidsverordening_Eindrapport.pdf

[3] Collectif Accessibilité Wallonie Bruxelles (CAWaB) (2024), '*Mémorandum 2024*', p. 12. Available online: https://cawab.be/wp-content/uploads/2024/08/memorandum2024-8cd.pdf

regulatory framework, but also from the fact that Belgian anti-discrimination legislation does not regard a lack of accessibility as a form of discrimination in its own right.

Thus, when a person encounters a step they cannot negotiate, the absence of a lift or a service they cannot access, courts generally analyse the situation in terms of denial of reasonable accommodation. This approach focuses on the individual's situation and the surrounding circumstances, and presupposes a request for accommodation. It cannot fully capture the structural dimensions of inaccessibility and therefore cannot recognise it as an infringement of the rights of persons with disabilities.

In this context, as the federal and federated entities are currently reviewing their anti-discrimination legislation and continuing their work on accessibility within the Interministerial Conference on Disability, Unia, at the request of Minister Rob Beenders' office, recommends establishing a clear and explicit link between inaccessibility and discrimination. Such a link is essential to make the right to accessibility effective for persons with disabilities, combat discrimination and guarantee effective remedies for failures in this area[4].

3 Recommendation

To make the right to accessibility effective for persons with disabilities, Unia recommends that the Federal State, the Walloon Region, the Brussels-Capital Region, the French Community and the German-speaking Community amend their respective anti-discrimination legislation to explicitly include lack of accessibility as a specific form of discrimination.

Since accessibility is both a forward-looking obligation and a right subject to progressive realisation, an instance of inaccessibility cannot, in itself, automatically be classified as discrimination. Discrimination would be established only where the absence or inadequacy of measures to improve accessibility reveals a failure to act diligently and effectively, without objective and reasonable justification.

Determining whether an instance of inaccessibility is discriminatory therefore necessarily requires a proportionality assessment to establish whether inaction or insufficient action can be legitimately justified in the circumstances of the case.

It is therefore important for the legislature to specify the criteria governing this proportionality assessment, which could include, in particular:

- compliance with applicable accessibility standards;
- the existence of accessibility plans or plans for bringing into compliance, with specific deadlines;
- concrete, progressive efforts to avoid maintaining the status quo;
- the time elapsed since the standards came into force;
- available resources and relevant constraints.

Lack of accessibility would be incorporated into the general framework of non-discrimination law, including provisions on objective and subjective litigation.

[4] It should be noted that the Flemish equal opportunities decree already contains provisions on accessibility. In particular, Article 6(2)(4) and (5) identifies the promotion of full accessibility of publicly accessible infrastructure and information, and of digital inclusion, as priorities of Flemish equal opportunities policy.

4 Legally established concepts: the right to inclusion and reasonable accommodation, and the prohibition of indirect discrimination

4.1 Inclusion

Belgium ratified the CRPD on 2 July 2009. Following ratification, it inserted Article 22*ter* into its Constitution in 2021, recognising that: '*Every person with disabilities has the right to full inclusion in society, including the right to reasonable accommodation*'.

Every term in this provision was chosen carefully. The use of 'inclusion' rather than 'integration' reflects the idea that it is primarily society and the environment that must adapt to enable the full and effective participation of the persons concerned. Similarly, in the French version of the Constitution, the expression '*personne en situation de handicap*' literally means 'person in a disabling situation', emphasising the role of the environment and the barriers that can lead to exclusion[5].

The second paragraph of Article 22*ter* provides that '*The law, decree or rule referred to in Article 134 shall guarantee the protection of this right*', thus requiring the legislature to act to protect the right to full inclusion[6].

By incorporating this provision into domestic law, Belgium affirmed its commitment to the fundamental principles of the CRPD, including respect for inherent dignity and individual autonomy, non-discrimination, inclusion, equality of opportunity and accessibility.

Finally, the parliamentary proceedings relating to Article 22*ter* of the Constitution clearly support the conclusion that '*the right to inclusion unquestionably encompasses accessibility*'[7]. This interpretation is confirmed by the Constitutional Court, which, in its judgment No. 126/2025 of 25 September 2025[8] (see 'Case law' section), reads Article 22*ter* of the Constitution in conjunction with Article 9 of the Convention on the Rights of Persons with Disabilities and considers that accessibility guarantees are inseparable from the right to inclusion.

Accessibility is thus an intrinsic component of inclusion, because it determines whether persons with disabilities can effectively access services and participate in society.

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[5] Art. 22ter - Annotation | SenLex - Senate

[6] Isabelle Hachez (2021), *La consécration constitutionnelle du droit à l'inclusion des personnes en situation de handicap (art. 22ter) : de la duplication du cadre juridique au dessin de politiques publiques*, in Journal des Tribunaux, pp. 11 and 15, http://hdl.handle.net/2078.3/253165 , cited in Germain Haumont and Carole Van Basselaere (2024), '*Actualités en matière de discrimination fondée sur le handicap*', in Stéphanie Wattier (ed.), *Actualités en matière d'égalité et de non-discrimination : questions choisies*, Anthemis, Liège.

[7] See in particular: Isabelle Hachez (2022), '*La consécration constitutionnelle du droit à l'inclusion des personnes en situation de handicap (article 22ter) : De la duplication du cadre juridique au dessin de politiques publiques',* p. 23. Cited in Germain Haumont and Carole Van Basselaere (2024), '*Actualités en matière de discrimination fondée sur le handicap*', in Stéphanie Wattier (ed.), *Actualités en matière d'égalité et de non-discrimination : questions choisies*, Anthemis, Liège.

[8] see Constitutional Court, judgment No. 126/2025 of 25 September 2025, especially B.20.3 and B.21.

4.2 Reasonable accommodation

The right to reasonable accommodation for persons with disabilities rests on an international, European and national legal framework.

At international level, Article 2 of the CRPD defines reasonable accommodation as '*necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms*', and Article 5(3) requires States to provide it.

At European level, Article 5 of Directive 2000/78/EC establishing a general framework for equal treatment in employment provides: '*In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned*.'

At the national level, the Directive was transposed into Belgian law through various legislative provisions at the federal, regional and community level, all of which therefore establish this right to reasonable accommodation. Belgium has also extended the scope of this obligation beyond employment to include, in particular, goods and services, social protection, education and other areas covered by anti-discrimination legislation.

This anti-discrimination legislation explicitly treats denial of reasonable accommodation as a form of discrimination[9], unless the reasons why the requested accommodation would impose a disproportionate burden on the person responsible for providing it can be demonstrated in concrete terms[10]. A protocol agreed between the different levels of government[11] provides a list of decisive criteria for assessing whether the requested accommodation is reasonable. However, this protocol emphasises the need for a factual, case-by-case assessment.

Finally, since March 2021, the right to reasonable accommodation has also been enshrined in Article 22*ter* of the Constitution.

4.3 Indirect discrimination

Indirect discrimination is an essential mechanism of non-discrimination law: it helps ensure substantive equality by moving beyond a strictly individual and formal conception of equality. It addresses situations

[9] See, for example: Article 14 of the Act of 10 May 2007 combating certain forms of discrimination, *Moniteur belge,* 30 May 2007.
[10] Article 4, 12°, *ibid.*
[11] Protocol between the Federal State, the Flemish Community, the French Community, the German-speaking Community, the Walloon Region, the Brussels-Capital Region, the Common Community Commission and the French Community Commission concerning persons with disabilities | Unia.

in which a provision, criterion or practice, although apparently neutral in its wording, has adverse effects on certain people because of a protected characteristic. '*The aim is to identify the real consequences of apparently neutral conduct that, intentionally or otherwise, conceals a difference in treatment based, in this case, on disability*'[12].

An indirect difference in treatment will not constitute discrimination if it can be objectively and reasonably justified. Under Belgian and European non-discrimination law, it must then be shown that the measure in question pursues a legitimate aim and that the means used to achieve that aim are appropriate and necessary. This requires a proportionality assessment to determine whether the measure is suitable for achieving its aim and does not go beyond what is necessary to do so.

5 The legal link between accessibility and discrimination

5.1 Accessibility: an essential condition for equality

Accessibility is an essential prerequisite for the effective exercise of all the fundamental rights of persons with disabilities. That is why it is established as a fundamental principle of the CRPD (Article 3).

Indeed, the absence or lack of accessibility creates structural barriers that prevent persons with disabilities from participating fully and effectively in social, economic, cultural and political life. These barriers result, in practice, in the denial of rights, particularly in education, employment, health, mobility, access to justice and civic participation.

Accessibility is therefore indispensable to non-discrimination : without it, formal equality remains theoretical and cannot become substantive equality.

In its general comment No. 6 on equality and non-discrimination (Article 5 of the CRPD), the UN Committee makes this clear:

> '*§ 40. Accessibility is a precondition and a means to achieve de facto equality for all persons with disabilities. For persons with disabilities to effectively participate in the community, States parties must address accessibility of the built environment, public transport, as well as information and communication services, which must be available and usable for all persons with disabilities (...)*'[13]. (emphasis added)'

The UN Committee also states in its general comment No. 2 on accessibility (Article 9 of the CRPD):

> *'§ 23. Since accessibility is a precondition for persons with disabilities to live independently, as provided for in article 19 of the Convention, and to participate fully and equally in society, denial of access to the physical environment, transportation, information and communication technologies, and facilities and services open to the public should be viewed in the context of*

[12] Ghesquière, V., Hachez, I. and Van Basselaere, C., 'Disability discrimination', in J. Ringelheim and P. Wautelet (eds), Comprendre et pratiquer le droit de la lutte contre les discriminations, CUP, vol. 184, Brussels, Anthemis, 2018. Available online: https://www.unia.be/files/Comprendre_et_pratiquer_le_droit_de_la_lutte_contre_les_discriminations_2018.pdf

[13] UN Committee on the Rights of Persons with Disabilities (2018), 'General comment No. 6 on equality and non-discrimination', § 40. Available online: General comment No.6 on equality and non-discrimination | OHCHR.

discrimination. Taking "all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities" (art. 4, para. 1 (b)) constitutes the main general obligation for all States parties. "States parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds" (art. 5, para. 2). […])' [14]' (emphasis added)

5.2 The obligation to provide reasonable accommodation versus the accessibility obligation

In its general comment No. 2 on Article 9 of the CRPD, the UN Committee clearly distinguishes the accessibility obligation from the obligation to provide reasonable accommodation:

'*§25. Accessibility is related to groups, whereas reasonable accommodation is related to individuals. This means that the duty to provide accessibility is an ex ante duty. States parties therefore have the duty to provide accessibility before receiving an individual request to enter or use a place or service. States parties need to set accessibility standards, 7 CRPD/C/GC/2 which must be adopted in consultation with organizations of persons with disabilities, and they need to be specified for service-providers, builders and other relevant stakeholders. Accessibility standards must be broad and standardized. In the case of individuals who have rare impairments that were not taken into account when the accessibility standards were developed or who do not use the modes, methods or means offered to achieve accessibility (not reading Braille, for example), even the application of accessibility standards may not be sufficient to ensure them access. In such cases, reasonable accommodation may apply. In accordance with the Convention, States parties are not allowed to use austerity measures as an excuse to avoid ensuring gradual accessibility for persons with disabilities. The obligation to implement accessibility is unconditional, i.e. the entity obliged to provide accessibility may not excuse the omission to do so by referring to the burden of providing access for persons with disabilities. The duty of reasonable accommodation, contrarily, exists only if implementation constitutes no undue burden on the entity.*

§ 26. The duty to provide reasonable accommodation is an ex nunc duty, which means that it is enforceable from the moment an individual with an impairment needs it in a given situation, for example, workplace or school, in order to enjoy her or his rights on an equal basis in a particular context. Here, accessibility standards can be an indicator, but may not be taken as prescriptive. Reasonable accommodation can be used as a means of ensuring accessibility for an individual with a disability in a particular situation. Reasonable accommodation seeks to achieve individual justice in the sense that non-discrimination or equality is assured, taking the dignity, autonomy and choices of the individual into account. Thus, a person with a rare impairment might ask for accommodation that falls outside the scope of any accessibility standard' (emphasis added).

As Stefan Sottiaux and Marie Spinoy explain in an opinion submitted to the Senate ahead of the adoption of article 22*ter*, although both obligations aim to promote access and participation for persons with

[14] UN Committee on the Rights of Persons with Disabilities (2014), 'General comment No. 2 on accessibility'. Available online: https://www.ohchr.org/fr/documents/general-comments-and-recommendations/general-comment-no-2-article-9-accessibility-0

disabilities, the accessibility obligation and the obligation to provide reasonable accommodation operate within distinct frameworks and have different legal effects. These obligations also illustrate the distinction between a right that takes immediate effect and a right subject to progressive realisation[15].

Because accessibility is a broad, structural requirement, it is generally considered a right subject to progressive realisation: barriers must be removed gradually but steadily. Although States cannot avoid the accessibility obligation, its practical implementation takes time. That is why the UN Committee stresses the need for action plans with concrete objectives, deadlines and penalties for non-compliance.

Reasonable accommodation, by contrast, addresses individual situations in which the existing environment prevents a person with a disability from participating on an equal basis. The right to reasonable accommodation falls under the prohibition of discrimination and, as such, has direct effect: it can be invoked and enforced immediately, subject to the limit of a disproportionate burden.

The two obligations are therefore complementary: neither replaces the other, and both contribute to achieving substantive equality for persons with disabilities.

5.3 Lack of accessibility as a factor in discrimination

In an article entitled 'Exploring the link between (in)accessibility and disability discrimination in legislation and case law'[16], Lisa Waddington explains:

> '*While the obligation not to discriminate on the basis of disability and the obligation to provide accessibility are two distinct duties, they are nevertheless connected. Where a building is inaccessible, for example because the only entrance is up some steps which a person who uses a wheelchair cannot climb, this can be regarded as a form of disability discrimination. This is because it results in a disadvantage that impacts directly on a person with a disability (direct discrimination) or because it is a seemingly neutral situation that is more likely to adversely affect some persons with disabilities (indirect discrimination).*'[17].

Lisa Waddington examined the relevant legislation and case law from Austria, Bulgaria, Finland and Ireland, and reveals that a lack of accessibility can be taken into account in a number of ways when assessing whether disability discrimination has occurred (see the 'European practices' section). She finds, however, that the link between inaccessibility and disability discrimination is still not well established in the legislation and case law of most EU Member States. As a result, the persons with disabilities affected often have no effective remedies or relevant enforcement mechanisms when regulations either inadequately address accessibility, or where relevant regulations are not complied with[18].

Yet, in its general comment No. 2, the UN Committee explicitly recommends that States parties treat lack of accessibility as a prohibited disability discrimination:

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[15] See, in particular: Stefan Sottiaux and Marie Spinoy (2020), 'Avis concernant les propositions de révision de la Constitution en vue de garantir les droits des personnes handicapées', p. 94. Available online: webdriver

[16] Lisa Waddington (2025), 'Exploring the link between (in)accessibility and disability discrimination in legislation and case law'. Available online: Equality Law Review 2024

[17] *Ibid.*, p. 54. Author's translation.

[18] *Ibid*., p. 72.

> '*§ 31. […] As a minimum, the following situations in which lack of accessibility has prevented a person with disabilities from accessing a service or facility open to the public should be considered as prohibited acts of disability-based discrimination:*
>
> > *(a) Where the service or facility was established after relevant accessibility standards were introduced;*
> >
> > *(b) Where access could have been granted to the facility or service (when it came into existence) through reasonable accommodation.*'

New lines of argument have also emerged from the case law of the European Court of Human Rights concerning inaccessibility as a form of discrimination, alongside failures to provide reasonable accommodation[19].

In its judgment of 31 May 2022 in *Arnar Helgi Lárusson v. Iceland*, the Court noted that, without access to the physical environment and to other facilities and services open or provided to the public, persons with disabilities would not have equal opportunities to participation in their respective societies. It held that the issue could affect the applicant's right to personal development and his right to establish and develop relationships with other human beings and the outside world, consequently, his right to respect for private life under Article 8 of the European Convention on Human Rights.

[19] S. GANTY, G. HAUMONT and P. CANNOOT, 'European Anti-Discrimination Case Law in 2021-2022: A Tour d'horizon of Crucial Developments', *Journal européen des droits de l'Homme*, 2023/4, p. 308; see 'Inaccessibility as discrimination'.

5.4 The lack of an effective remedy under the current legal framework

Despite the ratification of the CRPD and the adoption of Article 22*ter*, Unia finds it very difficult to have a lack of accessibility recognised as discrimination before Belgian courts (for more information, see the 'Case law' section). One reason is that accessibility is not treated as an autonomous, structural obligation but is more often examined through individual situations.

As noted above, in the absence of an explicit reference to accessibility in anti-discrimination legislation, judges analyse potentially discriminatory situations almost exclusively in terms of denial of reasonable accommodation and indirect discrimination. They therefore focus primarily on the complainant's individual situation and the surrounding circumstances, rather than treating inaccessibility as a structural problem affecting a group of people who share a protected characteristic. The person or entity complained against can thus readily argue that removing accessibility barriers would impose a disproportionate burden in response to a single complainant's situation.

A judgment in a case between Unia and the City of Tournai concerning the construction of a new footbridge over the Scheldt that is inaccessible to people with reduced mobility illustrates this difficulty. The court adopted a strictly individualised approach, noting in particular that other crossings exist in the city centre and that the claimants' use of the footbridge in question remained hypothetical. It concluded that '*the prospect of anyone in general, and the claimants in particular, making reasonable use of the footbridge is verging on the hypothetical*'[20].

This restrictive approach contrasts, however, with a smaller number of decisions in which courts have been willing to consider inaccessibility in its structural dimension. For example, in a case concerning the Flemish public transport company De Lijn, discrimination arising from a lack of accessibility was recognised, but only after it had been shown that accessibility problems had recurred over time: 16 incidents over five years involving different claimants[21]. The accumulation of complaints, framed as requests for reasonable accommodation in response to structural inaccessibility, made it possible to establish in law that discrimination had occurred. In this case, evidence of a pattern of unfavourable treatment was decisive in securing recognition of structural discrimination arising from a lack of accessibility[22].

Given the limitations of this approach centred on reasonable accommodation, indirect discrimination could, in theory, provide a more suitable framework for analysing situations of inaccessibility. Indirect discrimination has the particular advantage of moving beyond the limits of a strictly individual conception of discrimination to address its collective dimension. As Julie Ringelheim points out, indirect discrimination '*departs from this view by recognising that identical treatment may, in certain contexts, generate inequality. It requires us to look beyond the content or wording of the measure, rule or practice in question and consider its effects. […]*'[23]. It therefore requires consideration of a measure's impact on all those who

[20] Court of First Instance of Hainaut, Tournai Division (2025). *Judgment of 25 February 2025*. Available online: Court of First Instance of Hainaut, Tournai Division, 25… | Unia

[21] Antwerp Court of Appeal. (2025). *Judgment of 15 December 2025 – De Lijn case*. Available online: Antwerp Court of Appeal, 15 December 2025 | Unia

[22] Germain Haumont and Carole Van Basselaere (2024), 'Developments in disability discrimination ', in Stéphanie Wattier (ed.), Developments in equality and non-discrimination: selected issues, Anthemis, Liège, p. 137.

[23] Julie Ringelheim, Olivier Struelens and Jogchum Vrielink (2024), Non-discrimination law put to the test of justice. The practice of Belgian labour courts as a case study, unfinished draft article circulated as part of FNRS research, version of 21 May 2024, available online: Projet-PDR_J.RingelheimJ.VrielinkO.Struelens_21.05.2024.pdf

share a protected characteristic, rather than on the complainant alone, by identifying a particular disadvantage that significantly affects a group[24].

In disability matters, however, the justification mechanism provided for by Directive 2000/78/EC – and incorporated into anti-discrimination legislation – substantially hinders reliance on this concept. It provides that an indirect difference in treatment may be justified either by an objective and reasonable justification or, specifically in relation to disability, by showing that no reasonable accommodation can be put in place. As formulated, this system can be interpreted as establishing alternative conditions, leading to indirect differences in treatment based on disability being analysed primarily, or even exclusively, through the lens of reasonable accommodation – that is, according to an individual and context-specific approach.

Such an interpretation weakens the scope of indirect discrimination in relation to disability as a protected characteristic and limits the possibility of challenging structural measures that have exclusionary effects.

Although revising or clarifying the mechanism for justifying indirect disability discrimination could provide a more suitable analytical framework for situations in which environments or services designed for everyone in fact exclude people because of their lack of accessibility, such a change would not, on its own, be sufficient to fully address the positive obligations arising from Article 22*ter* of the Constitution and the CRPD.

These various limitations highlight the need to recognise a failure to ensure accessibility as a specific form of discrimination, allowing structural shortcomings in this area to be addressed directly and linked to positive obligations. Such a change would move beyond an approach centred on reasonable accommodation and fully establish accessibility as a requirement in its own right.

[24] *Ibid.*

6 Defining lack of accessibility as a specific form of discrimination

In Belgium, denial of reasonable accommodation is recognised in law as a specific form of discrimination. However, as shown above, this mechanism does not provide an effective remedy for structural failures to ensure accessibility.

As noted in sections 5.1 and 5.3, both the UN Committee[25] and the European Court of Human Rights[26] consider that a lack of accessibility can itself constitute discrimination, independently of any request for reasonable accommodation, where no improvement in accessibility is made over a given period without reasonable justification[27].

Unia therefore calls on the Belgian authorities to **define a lack of accessibility as a specific form of discrimination,** in accordance with the CRPD and pursuant to the principle of legality inherent in the second paragraph of Article 22*ter* of the Constitution, which states: '*The law, decree or rule referred to in Article 134 shall guarantee the protection of this right*'. This paragraph requires the legislature to enact laws introducing structural reforms to remove barriers to the inclusion of persons with disabilities. As noted in section 4.1, however, it is well established in legal scholarship that '*the right to inclusion undoubtedly encompasses accessibility*'[28].

Because accessibility is a right subject to progressive realisation, but one that requires genuine and regular progress, not every failure to ensure accessibility would automatically lead to a finding of discrimination. Such a finding would be made only if the person or entity concerned had failed, without objective and reasonable justification, to fulfil their obligation to implement the measures necessary to improve accessibility progressively and regularly.

In this context, the court would have to determine whether the difference in treatment is legitimately justified and, to that end, conduct a proportionality assessment to evaluate in concrete terms whether the obligation to take action to improve accessibility has been met.

This assessment could draw on a range of objective indicators defined by the legislature, such as:

- compliance with applicable accessibility standards;
- the existence of accessibility plans or plans for bringing into compliance, with specific deadlines;
- concrete, progressive efforts to avoid maintaining the status quo;
- the time elapsed since the standards came into force;

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[25] UN Committee on the Rights of Persons with Disabilities (2014), 'General comment No. 2 on accessibility'. Available online: https://www.ohchr.org/fr/documents/general-comments-and-recommendations/general-comment-no-2-article-9-accessibility-0

[26] Judgment in Arnar Helgi Lárusson v. Iceland of 31 May 2022. 'The European Court of Human Rights noted that, without access to the physical environment and to other facilities and services open or provided to the public, people with disabilities would not have equal opportunities for participation in their respective societies. It held that the issue in question was capable of affecting the applicant's right to personal development and his right to establish and develop relationships with other human beings and the outside world, consequently, the applicant's private life within the meaning of Article 8 of the European Convention on Human Rights.'

[27] Germain Haumont and Carole Van Basselaere (2024), 'Developments in disability discrimination ', in Stéphanie Wattier (ed.), *Developments in equality and non-discrimination: selected issues*, Anthemis, Liège, p. 136.

[28] See in particular: Isabelle Hachez (2022), 'The constitutional enshrinement of the right to inclusion of persons with disabilities (Article 22ter): From duplication of the legal framework to the design of public policies', p. 23.

- available resources and relevant constraints.

Adding this provision to anti-discrimination legislation would be closely linked to the strategies that the authorities must adopt to make the environment progressively accessible, as called for by the UN Committee. In its concluding observations addressed to Belgium in September 2024, the UN Committee urged Belgium: '*To devise authoritative plans, with clear time frames, competencies, budgets and monitoring mechanisms, to render public transport accessible to persons with disabilities, including persons with high support requirements, and extend such plans to all modes of transportation, including transport by rail, bus, air and sea* [29].

These two measures would reinforce each other. On the one hand, adopting official plans would facilitate the court's proportionality assessment. On the other hand, incorporating the accessibility obligation into anti-discrimination legislation would give existing and future accessibility obligations a more binding framework, in accordance with the requirements of the CRPD.

Moreover, non-discrimination law offers a major procedural advantage: the shifting of the burden of proof. The burden falls on the person or entity alleged to have committed the infringement – in this case, the person or entity responsible for the lack of accessibility – provided that the victim has put forward facts giving rise to a presumption of discrimination. Applied to failures to ensure accessibility, this mechanism would mean that the burden of proving a failure no longer falls on the victim – who is often in a vulnerable position and has limited resources – but instead falls on the responsible entity to show that it has fulfilled its obligations.

Finally, such a change would benefit from being accompanied by clarification of the rules on indirect disability discrimination. In this regard, and to comply with the requirements of the CRPD and Article 22ter of the Constitution (see section 5.4), Unia also recommends amending the rules on justification so that the conditions relating to objective and reasonable justification and the obligation to provide reasonable accommodation are cumulative, rather than alternative[30].

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[29] UN Committee on the Rights of Persons with Disabilities (2024), 'Concluding observations on the report of Belgium', p. 6, para. 18(d). Available online: tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FBEL%2FCO%2F2-3&Lang=en.

[30] Unia (2026), 'Opinion on the draft Federal Disability Action Plan 2025–2029', p. 48. Available online: Avis-Unia-plan-daction-2025-2029_FR_VF.pdf

8 Annexes

8.1 Legal framework

8.1.1 UN Convention on the Rights of Persons with Disabilities (CRPD)

Belgium ratified the CRPD in July 2009, and it entered into force on 1 August 2009. Accessibility is central to the Convention: it is both a fundamental principle (Article 3), guiding all the rights enshrined in it, and a specific legal obligation (Article 9), requiring States to implement concrete measures.

Article 2 defines '*discrimination on the basis of disability* as*: 'any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.'*

Article 3 sets out the general principles of the CRPD, including non-discrimination (b), full and effective participation and inclusion in society (c), and accessibility (f).

Article 4 provides that '*States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake: a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention; b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities'.*

Article 5, '*Equality and non-discrimination',* states: *'1 States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. 2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. 3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided. 4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention."*

Article 9 requires States to take "*appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to [...] the physical environment and to transportation". This includes, in particular, the obligation for States to identify and eliminate obstacles and barriers to accessibility for persons with disabilities*.

According to the United Nations Committee on the Rights of Persons with Disabilities, which monitors implementation of the CRPD, "*accessibility should be encompassed in general and specific laws on equal opportunities, equality and participation in the context of the prohibition of disability-based discrimination. Denial of access should be clearly defined as a prohibited act of discrimination. Persons with disabilities who have been denied access to the physical environment, transportation, information and communication, or services open to the public should have effective legal remedies at their disposal".*

The Committee further states that "*When reviewing their accessibility legislation, States parties must consider and, where necessary, amend their laws to prohibit discrimination on the basis of disability. As a*

minimum, the following situations in which lack of accessibility has prevented a person with disabilities from accessing a service or facility open to the public should be considered as prohibited acts of disability-based discrimination: (a) Where the service or facility was established after relevant accessibility standards were introduced; (b) Where access could have been granted to the facility or service (when it came into existence) through reasonable accommodation. "[31] (emphasis added).

Article 21 requires States to take "*appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas, on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including* : (a*) providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost; (b) accepting and facilitatig the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions; (c) urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities; (d) encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities; (e) recognizing and promoting the use of sign languages."*

8.1.2 European Convention on Human Rights

Article 8 of the European Convention on Human Rights enshrines the "right to respect for private and family life". It provides that "*everyone has the right to respect for his private and family life, his home and his correspondence*".

In its judgment in "Arnar Helgi Lárusson v. Iceland, no. 23077/19, 31 May 2022", the European Court of Human Rights concluded that the inaccessibility of facilities open to the public falls within the scope of Article 8 of the Convention. The Court stated that this provision applies only in exceptional cases where an inability to access public establishments or establishments open to the public prevents the applicant from living their life in such a way that their right to personal development and their right to establish and maintain relationships with other human beings and the outside world are at stake. It noted, however, that without access to the physical environment and other facilities and services open or provided to the public, persons with disabilities do not enjoy equal opportunities to participate in the society of which they are members.

8.1.3 European Accessibility Act

At European level, the European Union has adopted the European Accessibility Act (EAA)[32], a directive imposing accessibility requirements for many products and services, such as payment terminals, ticket machines and cash machines.

[31] UN Committee on the Rights of Persons with Disabilities. (2014), "General comment No. 2 on accessibility", §29 +31, Available online: https://www.ohchr.org/fr/documents/general-comments-and-recommendations/general-comment-no-2-article-9-accessibility-0

[32] European Union. (2019). Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services. Available online: Directive - 2019/882 - EN - EUR-Lex

The directive also contains optional rules to make buildings where these products and services are offered accessible, so that persons with disabilities can access them without barriers.

Belgium has transposed this directive into its domestic legislation. However, it chose not to adopt the optional provisions concerning the accessibility of buildings. This means that, although the products and services concerned must meet European requirements, obligations relating to the accessibility of the buildings in which they are offered have not been incorporated into Belgian law.

8.1.4 Belgian Constitution (Articles 10, 11 and 22*ter*)

Article 10 of the Constitution provides that "*No class distinctions exist in the State. Belgians are equal before the law; they alone are eligible for civil and military service, but for the exceptions that can be created by a law for particular cases. Equality between women and men is guaranteed*."

Article 11 provides: "*Enjoyment of the rights and freedoms recognised for Belgians must be provided without discrimination. To this end, laws and federate laws guaran-tee among others the rights and freedoms of ideological and philosophical minorities*."

Article 22*ter* establishes that "*Every person with a disability has the right to full inclusion in society, including the right to reasonable accommodation.*". The second part of Article 22*ter*, which provides that "*the law, federate law or rule referred to in Article 134 guarantees the protection of this right.*", imposes positive obligations on public authorities. Thus, each legislature, within its area of competence, is required to implement progressively the constitutional right of persons with disabilities to full inclusion. The legislature is thus emphatically reminded of its obligations under the CRPD: it must adopt laws introducing structural reforms to eliminate barriers to the participation of persons with disabilities.

8.1.5 Anti-discrimination legislation: the federal law of 10 May 2007 and the anti-discrimination decrees and ordinances specific to each federated entity

In Belgium, the law of 10 May 2007 combating certain forms of discrimination prohibits all forms of discrimination, including disability discrimination, in its various areas of application. The federated entities have also adopted their own decrees and ordinances on discrimination within their areas of competence. Indeed, as the protection of fundamental rights is a concurrent competence[33], each entity has the power to enact rules to prevent and penalise discrimination in the areas for which it is responsible[34].

The federal law and the decrees and orders of the federated entities are based, in particular, on international standards, such as the various European directives on non-discrimination.

The structure and content of the various Belgian anti-discrimination laws are largely similar. For example, the denial of reasonable accommodations to a person with a disability is recognised as a form of discrimination in each of these laws.

Anti-discrimination legislation is primarily civil in nature: victims may bring an action for an injunction (or an action on the merits) before a civil court to stop and/or obtain a finding of discrimination and claim, among other things, damages.

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[33] M. Verdussen, "Fédéralisme et droits fondamentaux", in Les grands arrêts sur le partage des compétences dans l'Etat fédéral, Larcier, Brussels, 2019, pp. 40 et seq.

[34] All relevant legislation can be found on Unia's website, under Legislation & Case Law.

8.1.6 Regional planning regulations

Each Region has its own rules on the accessibility of buildings and public spaces[35]. However, these rules are broadly similar in scope and requirements. Accessibility standards apply to major construction, conversion or renovation works requiring planning permission. Compliance with them is checked when planning permission is sought. At present, no Region has regulations aimed at making the existing built environment accessible.

8.2 European practices

8.2.1 Bulgaria

In Bulgaria, the Protection against Discrimination Act (PADA) provides that: "*the construction and maintenance of an architectural environment that makes it difficult for persons with disabilities to access public places, shall be considered discrimination*". According to Lisa Waddington, this is the clearest statement that a lack of physical accessibility amounts to disability discrimination found in the non discrimination legislation of any of the EU Member States. This provision explicitly equates a lack of accessibility – defined as "*an architectural environment that makes it difficult for persons with disabilities to access public places*" – with direct discrimination[36].

8.2.2 Austria

In Austria, disability discrimination legislation explicitly provides that a failure to comply with accessibility legislation or standards is relevant for a discrimination claim.

> "*Indirect discrimination shall be taken to occur where apparently neutral provisions, criterions or practices or characteristics of constructed areas would put persons with disabilities at a particular disadvantage compared with other persons, unless the provisions, criterions or practices or characteristics of constructed areas are objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.*".
>
> "*When assessing whether certain circumstances constitute indirect discrimination it has to be taken into account whether relevant legislation exists in regard to accessibility and to what extent it has been complied with. Premises or other facilities, means of transport, technical equipment, information systems or other dedicated spheres of life shall be deemed accessible if they can be accessed and used by persons with disabilities in a customary way, unassisted and without extra difficulty*."

As Lisa Waddington explains, when assessing whether the provision of accessibility would amount to a disproportionate burden in the context of the reasonable accommodation duty/prohibition of indirect discrimination, the duty bearer's (lack of) compliance with legislation setting accessibility standards should

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[35] Walloon Region: *Regional Planning Guide, Articles 414–415*. Available online: Guide régional d'urbanisme (GRU) – articles 414 et 415 - Atingo; Brussels-Capital Region: *Regional Planning Regulations, Title IV and Title.* Available online: RRU_Titre_4_FR.pdf and RRU_Titre_7_FR.pdf

[36] Lisa Waddington (2025), "Exploring the link between (in)accessibility and disability discrimination in legislation and case law". Available online: Equality Law Review 2024.

be taken into account. It would seem to be impossible for a duty bearer to argue that a specific accommodation would amount to a disproportionate burden, and therefore not be required, if the relevant action is mandated under accessibility legislation [37].

8.2.3 Norway

In Norway, from 2008, persons with disabilities were protected against discrimination in all areas of society by the Discrimination and Accessibility Act, which introduced, among other things, the concept of universal design. From 1 January 2018, disability is protected against discrimination in all areas of society through the Anti-Discrimination and Equality Act of 2017.

This legislation is based on the principle that equality requires accessibility and accommodation. It therefore imposes an obligation of universal design on public and private undertakings focused on the general public, both for the built environment (Section 17) and for information and communication technologies (Section 18), unless this would entail a disproportionate burden, assessed against specific criteria such as the effect on persons with disabilities, the public nature of the activity, costs, undertaking's resources, and safety or cultural heritage considerations[38].

8.2.4 Netherlands

In their evaluation of the Flemish Equal Opportunities Decree[39], Jogchum Vrielink, Elke Cloots and Stefan Sottiaux highlight the Dutch Equal Treatment on the Grounds of Disability or Chronic Illness Act (Wet gelijke behandeling handicap en chronische ziekte, Wgbh/cz) because it provides for a positive accessibility obligation.

This legislation establishes a direct link between the prohibition of discrimination and an obligation to ensure progressive accessibility:

> *'A person to whom the prohibition of differences in treatment applies must also ensure general accessibility for persons with disabilities or chronic illnesses, at least progressively, unless this would impose a disproportionate burden on that person"*[40].

Supplementary rules may be laid down by regulation to specify how this obligation is to be implemented. This obligation applies in all areas covered by the Wgbh/cz, including employment, primary and secondary education, vocational education (practical education, vocational secondary education, higher education and university education), housing, public transport, and goods and services.

As the authors point out, this approach forms part of a longstanding debate on the relationship between general accessibility obligations — often set out in separate legal instruments — on the one hand, and

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[37] *Ibid*, p.59.
[38] European Disability Expertise (EDE), DOTCOM search - European Commission
[39] Jogchum Vrielink, Elke Cloots and Stefan Sottiaux (2020), *Evaluatie Gelijkekansendecreet. Deel i – Rechtsvergelijking. (Evaluation report on the Flemish Decree of 10 July 2008 establishing a framework for Flemish equal opportunities policy),* p. 88.
[40] *Ibid*. Article 2a(1) Wgbh/cz (author's translation). Original text: "*Degene tot wie het verbod van onderscheid zich richt, draagt daarnaast tenminste geleidelijk zorg voor de algemene toegankelijkheid voor personen met een handicap of chronische ziekte, tenzij dat voor hem een onevenredige belasting vormt*"

reasonable accommodation and non-discrimination law on the other. In this respect, they consider the Dutch solution particularly interesting. Although the Netherlands has specific, detailed accessibility legislation, the legislature has chosen to introduce, in addition, a general accessibility obligation binding on all actors subject to non-discrimination law and positive equality obligations. The aim of this development is to ensure that, in time, ' *accessibility for all is no longer seen as a service or an exception, but as a matter of course*'[41].

8.2.1 Sweden

In Sweden, the Discrimination Act has recognised 'inadequate accessibility' as a specific form of discrimination since 2015[42]. Section 4(3) provides that:

> '*In this Act, discrimination has the meaning defined in this section: […] 3. Inadequate accessibility: that a person with disability is disadvantaged through a failure to take measures for accessibility to enable the person to come into a situation comparable with that of persons without this disability where such measures are reasonable on the basis of accessibility requirements in laws and other statutes, and with consideration to: - the financial and practical conditions, - the duration and nature of the relationship or contact between the operator and the individual, and - other circumstances of relevance*.'

Although this development establishes an explicit link between inaccessibility and discrimination, its scope remains limited. First, the mechanism depends on an assessment of whether measures are 'reasonable', taking account of financial and practical considerations in particular. This brings the obligation closer to the reasonable accommodation regime and limits its structural impact.

8.3 Relevant case law

8.3.1 UN Committee on the Rights of Persons with Disabilities

8.3.1.1 Nyusti and Takács v. Hungary, 21 June 2013 (CRPD/C/9/D/1/2010)

The obligation under Article 9 to create an accessible environment concerns not only public services but also the accessibility of any service offered to the public, including private services.

Where a private bank provides cash machines without Braille markings or audio instructions, the State breaches its obligation under Article 9(2)(b) to take appropriate measures to ensure that private entities offering facilities or services open or provided to the public take into account all aspects of accessibility for persons with disabilities.

8.3.1.2 X. v. Argentina, 17 June 2014 (CPRD/C/11/D/8/2012)

Accessibility is a general principle that applies to persons with disabilities deprived of their liberty.

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[41] *Ibid.*

[42] Swedish Government (2015), "*Inadequate accessibility became a new form of discrimination in 2015*". Available online: Inadequate accessibility became a new form of discrimination in 2015 - Government.se

States are obliged to take measures to ensure accessibility and, to that end, to identify and remove barriers so that a person with a disability can participate fully in all aspects of life within the place of detention.

8.3.1.3 F. v. Austria, 21 September 2015 (CRPD/C/14/D/21/2014)

The Committee notes that accessibility concerns groups, whereas reasonable accommodation concerns individuals.

This means that the obligation to ensure accessibility is an ex ante obligation: States must provide accessibility before they receive a request for access to a place or for the use of a service.

The Committee also recalls that the obligation to ensure accessibility is unconditional. Those subject to the obligation cannot justify their failure to act on the basis of the cost of ensuring access for persons with disabilities.

The Committee recalls that the transport company began installing the digital audio system in March 2004. Line 3 was extended in August 2011. Yet no new stops were equipped with this well-established system, whose installation when the line was extended would have incurred only minimal cost.

The Committee takes note of the complainant's argument that the system gives him and other persons with visual impairments immediate access to the information they need, on the same basis as other passengers, whereas other systems (internet, voice messages and text messages) cannot provide this. The failure to install the audio system when the line was extended therefore amounted to a denial of access, on an equal basis with others, to information and communication technology, facilities and services open to the public.

There was therefore a violation of Article 5(2) and Article 9(1) and (2)(f) and (h) of the Convention.

8.3.2 European Court of Human Rights

8.3.2.1 Arnar Helgi Lárusson v. Iceland, 31 May 2022 (no. 23077/19)

The applicant, Arnar Helgi Lárusson, uses a wheelchair. He was denied access to two buildings housing arts and cultural centres run by his municipality. He alleged discrimination under Article 8 of the ECHR (protection of private life), taken together with Article 14 of the ECHR (prohibition of discrimination).

The Court first recalled that the ECHR '*should, as far as possible, be interpreted in harmony with other rules of international law of which it forms partt*' and '*the provisions regarding the rights of people with disabilities set out in the CRPD should, along with other relevant material* — referring to the UN Committee's general comments — *should be taken into consideration*.'

The Court '*observes, in this connection, that in its General Comment No. 2 the CRPD Committee noted that the denial of access of people with disabilities to, inter alia, facilities and services open to the public should be viewed within the context of discrimination*'.

The Court held that there had been no violation of Article 8 of the ECHR taken together with Article 14 of the ECHR. Iceland had already made considerable efforts; requiring it to go further would not be reasonable.

'63. Nevertheless, taking account of the nature and limited scope of its assessment, as described above, and the State's wide margin of appreciation, (see paragraphs 58-59 above), the Court is not convinced that the lack of access to the buildings in question amounted to a discriminatory failure by the respondent State to take sufficient measures to correct factual inequalities in order to enable the applicant to exercise his right to private life on an equal basis with others. The Court notes, in this regard, that considerable efforts seem to have been made to improve accessibility to public buildings and buildings with public functions in Reykjanesbær following the parliamentary resolution of 2011 (see paragraph 18 above). In deciding on those improvements, the municipality prioritised improving accessibility to educational and sports facilities, which is neither an arbitrary nor an unreasonable strategy of prioritisation, also considering the emphasis which the Court has placed on access to education and educational facilities in its case-law (see Enver Şahin, and Çam, both cited above). Further accessibility improvements which have since been made, although not decisive for the assessment of the present case (see paragraph 31 above), nevertheless demonstrate a general commitment to working towards the gradual achievement of universal access in line with the relevant international materials (see paragraphs 22 and 27 above). The Court thus accepts that, in the circumstances of the present case, imposing on the State a requirement under the Convention to put in place further measures would have amounted to imposing a "disproportionate or undue burden" on it within the context of its positive obligations, as established by the Court's case-law (see paragraph 59 above), to reasonably accommodate the applicant.

64. Therefore, in conclusion, the Court finds that the respondent State and Reykjanesbær took considerable measures to assess and address accessibility needs in public buildings, within the confines of the available budget and having regard to the cultural heritage protection of the buildings in question (see paragraphs 51-52 above). The Court reiterates that the scope of its assessment has been limited to whether the respondent State complied with its positive obligations by taking sufficient measures to correct factual inequalities impacting the applicant's equal enjoyment of his right to private life. In the light of the above and considering the measures already undertaken, the Court concludes that the applicant was not discriminated against in the enjoyment of his right to respect for private life.'

8.3.3 National case law

As noted in section 5.4, Unia observes that it remains difficult to persuade Belgian courts to recognise a failure to ensure accessibility as discrimination. Although case law has, on several occasions, incorporated accessibility into anti-discrimination reasoning, it has generally done so on an ad hoc rather than a systematic basis.

8.3.3.1 Constitutional Court, 25 September 2025[43]

In Brussels, a joint decree and order governs the digital transition of public authorities. The Constitutional Court interprets certain provisions and states that: (1) the three non-digital alternatives provided for (in-person reception, a telephone service and postal correspondence) are cumulative, so public authorities must offer all three (in addition to digital access); (2) any alternatives to these three non-digital options must themselves be non-digital and guarantee an equivalent level of service; and (3) public authorities

[43] Constitutional Court, 25 September 2025 | Unia

cannot dispense with these three non-digital options (or equivalent alternatives), even where providing them would entail a disproportionate burden.

8.3.3.2 Court of Arbitration (now the Constitutional Court), 16 June 2004

In its judgment no. 106/2004 of 16 June 2004, concerning the electronic publication of the Belgian Official Gazette, the Constitutional Court, then known as the Court of Arbitration, found that the lack of effective accessibility for all sections of the public constituted discrimination contrary to Articles 10 and 11 of the Constitution: '*as a result of the contested provisions, a significant number of people will be deprived of effective access to official texts, particularly because of the absence of accompanying measures enabling them to consult those texts, whereas previously they could acquaint themselves with the contents of the Belgian Official Gazette without needing any particular equipment or any qualification other than the ability to read'*[44].

8.3.3.3 Antwerp Court of Appeal, 15 December 2025[45]

De Lijn discriminates against persons with disabilities by failing to provide reasonable accommodation that would enable them to use public transport independently. According to the Court of Appeal, this amounts to systematic unfavourable treatment, and the problem is not being taken sufficiently seriously.

The incidents included drivers failing to stop where these passengers were waiting for their bus, and buses or trams being inaccessible because the equipment needed to deploy the access ramp was unavailable or because some drivers lacked the willingness or technical knowledge to do so. The victims receive €1,300 in compensation for non-material harm per incident.

8.3.3.4 Dutch-speaking Brussels Court of Appeal, 31 March 2025[46]

The Court of Appeal ruled against the Belgian National Railway Company (SNCB) for failing to provide reasonable accommodations at Tielen station, preventing a wheelchair user from travelling by train.

The Court of Appeal ordered the SNCB to make changes that would enable him to travel on weekdays. As assistance for passengers with reduced mobility is not provided exclusively for one particular individual, the effect of this judgment is that all passengers with reduced mobility can now receive assistance with boarding and alighting at Tielen station.

8.3.3.5 French-speaking Brussels Court of First Instance, 28 February 2025

Unia, the Collectif Accessibilité Wallonie Bruxelles (CAWaB) and a wheelchair user brought an action for an injunction against the SNCB, seeking to ensure that wheelchair users could receive assistance from train staff when boarding trains. The claimants argued that, at certain accessible stations served by trains

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[44] For an analysis of this judgment, see in particular: Germain Haumont and Carole Van Basselaere (2024), '*Developments in disability discrimination*', in Stéphanie Wattier (ed.), *Developments in equality and non-discrimination: selected issues*, Anthemis, Liège, p. 137.

[45] Antwerp Court of Appeal, 15 December 2025 | Unia. For an analysis relating to accessibility as a form of discrimination, see: Germain Haumont and Carole Van Basselaere (2024), '*Developments in disability discrimination*', in Stéphanie Wattier (ed.), *Developments in equality and non-discrimination: selected issues*, Anthemis, Liège, p. 137.

[46] Dutch-speaking Brussels Court of Appeal, 31 March 2025 | Unia

equipped with access ramps, the lack of a guarantee that they could board constituted disability discrimination.

In its judgment, the court recognised that there was an indirect difference in treatment, with persons with reduced mobility suffering a particular disadvantage. However, it held that the measures sought (a systematic guarantee of access without advance booking) would be unreasonable in view of the SNCB's operational, organisational, financial and safety constraints. The court therefore considered the indirect difference in treatment to be legally justified and found that the SNCB could not be held responsible for a denial of reasonable accommodation.

8.3.3.6 Hainaut Court of First Instance, Tournai division, 25 February 2025[47]

Two individuals and Unia brought an action for an injunction against the city of Tournai following plans to build a new pedestrian and cycle bridge that would not be accessible to persons with reduced mobility.

According to the Court of First Instance, the measure requested went beyond what was reasonable. In its judgment, the court adopted a strictly individualised approach, noting in particular that other crossings existed in the city centre and that the claimants' use of the bridge in question remained hypothetical.

It concluded that 'the prospect of anyone in general, and the claimants in particular, making reasonable use of the bridge is virtually non-existent'.

8.3.3.7 Court of First Instance of Hainaut, Charleroi Division, 7 February 2025[48]

A man who uses a wheelchair wished to enrol on a medical secretarial course. In October 2019, he requested several reasonable accommodations: an access ramp, accessible toilets and a change of classroom. These were not provided until October 2021 and February 2022.

The Court of First Instance ruled that the man had been subjected to discrimination because the reasonable accommodations had not been put in place in time, and awarded him €2,000 in damages.

The court stated: '*By failing to put the required reasonable accommodations in place within a reasonable time, and no later than the start of the 2020–2021 academic year, WBE* (public education provider in Wallonia-Brussels) *did not enable the claimant to access education on the same terms as other students or in a manner that respected his right to full inclusion. Although the necessary and appropriate modifications and adjustments for the claimant were described as "substantial" at the meeting of 8 October 2024, they did not impose a disproportionate or undue burden on WBE*.'

8.3.3.8 Court of First Instance of Brussels (French-speaking), 27 January 2025[49]

A woman who uses a wheelchair or, for short distances, crutches wished to have a stairlift installed in the building where she lived. The co-owners, however, refused to consent. The Court of First Instance, agreeing with the justice of the peace, found that there had been no breach of anti-discrimination legislation and that the owners were entitled to refuse the installation of the stairlift.

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[47] Hainaut Court of First Instance, Tournai division, 25… | Unia
[48] Court of First Instance of Hainaut, Charleroi Division,… | Unia
[49] Court of First Instance of Brussels (French-speaking), 27… | Unia