

REASONABLE ACCOMMODATION FOR MENTAL DISORDERS: THE CASE OF PUBLIC SCHOOL HEADMASTERS

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Abstract: This article examines the legal contours of disability-based discrimination in employment, with particular emphasis on the employer's duty to provide reasonable accommodation under European and Czech law. It undertakes a doctrinal analysis of the relevant legal framework, drawing upon the jurisprudence of the Court of Justice of the European Union and the Supreme Court of the Czech Republic. The study subsequently narrows its focus to a specific institutional context—namely, the position of headmasters within public schools operating under the Czech regional education system. This focus is justified by the distinctive legal status of headmasters, who occupy a dual role vis-à-vis the employing legal entity and the school's founding authority. The article seeks to determine whether Czech legislation clearly delineates the entity responsible for implementing reasonable accommodation in such cases. It further assesses the compatibility of the national legal framework with international and EU standards on non-discrimination and equal treatment. Particular attention is paid to the procedural and substantive dimensions of the accommodation obligation, including its scope, limits, and enforceability. The analysis also explores the potential forms that reasonable accommodation may take, considering the managerial and pedagogical functions of school headmasters. The article argues that the current legal regulation lacks sufficient clarity and may give rise to legal uncertainty and inconsistent application. It concludes by proposing interpretative and legislative recommendations aimed at enhancing legal certainty and ensuring effective protection of the rights of persons with disabilities in educational leadership roles.

Keywords: Discrimination, Reasonable Accommodation, Mental Disorders, Public Schools, Headmaster, Founder

INTRODUCTION

The issue of reasonable accommodation in cases of mental disorders is of particular importance for several reasons. Firstly, mental health conditions are prevalent, affecting millions of individuals worldwide. According to the National Institute of Mental Health, one in five individuals will experience a mental health condition in their lifetime¹. In 2019, mental health conditions were among the 10 primary contributors to disease burden worldwide—an increase in burden being observable since 1990.² This statistic underscores the importance of addressing the needs of individuals with such conditions in various settings, including the workplace. According to the World Health Organization (WHO),³ approximately one in eight individuals worldwide is affected by a mental

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¹ Accommodations for Employees with Mental Health Conditions. In: *US Department of Labor* [online]. [2025-05-30]. Available at: <https://www.dol.gov/agencies/odep/program-areas/mental-health/maximizing-productivity-accommodations-for-employees-with-psychiatric-disabilities>.

² NAFARIEH, K. – KRÜGER, S. – DEUTSCHER, K. (eds.). Prevalence of mental, behavioural or neurodevelopmental disorders according to the International Classification of Diseases 11: a scoping review protocol. In: *BMJ Open* 2024 [online]. [2025-05-30]. Available at: <https://bmjopen.bmj.com/content/bmjopen/14/6/e081082.full.pdf>.

³ Depression and Other Common Mental Disorders. In: *World Health Organization* [online]. 3. 1. 2017 [2025-07-16]. Available at: <https://www.who.int/publications/i/item/depression-global-health-estimates>.

disorder, amounting to more than 970 million people globally. The most prevalent mental health conditions include anxiety disorders, which affect an estimated 301 million individuals, followed by depressive disorders with approximately 280 million cases. Bipolar disorder is estimated to affect around 40 million people, while schizophrenia impacts approximately 24 million individuals. At the same time, 46% of EU citizens reported experiencing an emotional or psychosocial problem within the past 12 months. Furthermore, in 2023 89% of respondents agreed that the promotion of mental health is equally as important as the promotion of physical health. Additionally, 25% of EU citizens indicated that they or a family member had encountered difficulties in accessing mental health services.⁴ These data clearly indicate not only that the issue of mental health—both in and beyond the workplace—is highly relevant, but also that it may be underestimated, for example due to stigmatization or suboptimal access to appropriate medical care.

Mental health, or its impairment, also manifests in the workplace. The stigma associated with mental health conditions often leads to discrimination and exclusion in the workplace. If an employee is affected by a health condition of the nature of a mental disorder, it may, under certain circumstances, be the employer's responsibility to attempt to accommodate that condition. Reasonable accommodation refers to adjustments or modifications provided by an employer to enable people with disabilities to enjoy equal employment opportunities. These accommodations are required not only under various domestic legal regimes, such as the Americans with Disabilities Act in the United States,⁵ but also under European Union law, most notably Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.⁶ This directive aims to combat discrimination based on religion or belief, disability, age, or sexual orientation. The process of implementing reasonable accommodation should be individualized and collaborative.

However, there are situations in which it is, at least from a factual standpoint, debatable who qualifies as the employer, or more precisely, which entity bears the responsibility to implement such reasonable accommodation.

This article explores the issue of discrimination on the grounds of disability, with a particular focus on the employer's obligation to provide reasonable accommodation. To this end, the legal framework and relevant case law of the Court of Justice of the European Union⁷ and the Supreme Court of the Czech Republic will be described and analysed.

Subsequently, the text will focus on a more specific context—namely, the provision of reasonable accommodation in the case of headmasters of public schools within the regional education system in the Czech Republic. Despite the general obligation to provide

⁴ A comprehensive approach to mental health. In: *European Commission* [online]. 9. 10. 2023 [2025-07-16]. Available at: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-life/european-health-union/comprehensive-approach-mental-health_en.

⁵ Accommodations for Employees with Mental Health Conditions. In: *US Department of Labor* [online]. [2025-05-30]. Available at: <https://www.dol.gov/agencies/odep/program-areas/mental-health/maximizing-productivity-accommodations-for-employees-with-psychiatric-disabilities>.

⁶ Hereinafter also "Directive 2000/78" or "Directive".

⁷ Hereinafter also "CJEU".

reasonable accommodations, Czech law reveals a gap concerning school principals as a specific category of employees. The rationale for this focus lies in their unique legal status, both within the legal entity operating the school and in relation to the school's founding authority. While it would certainly be possible to examine reasonable accommodation obligations for executive bodies more broadly, this article focuses specifically on the public school headmasters, considering their institutional status and their interaction with the various individuals participating in the educational process.

The first objective is to determine whether Czech legislation specifies who may or must ensure the implementation of reasonable accommodation with respect to a public school headmaster, and whether such regulation complies with international legal standards. The second objective is to identify the entity responsible for providing reasonable accommodation in such cases and to examine what form this accommodation might take, considering the specific legal and institutional position of public school headmasters.

I. DISCRIMINATION

Discrimination may be defined as less favourable treatment of people in comparable situations in one of the areas defined by the law (which includes the area of work and employment), and on the basis of one of the grounds (hereinafter also “protected characteristics”) specified by the law.⁸ It means that one party (in our case, the employer) is obliged not to behave towards the other party (in our case, the employee) in an undesirable manner based on a discriminatory ground. In other words, it implies an obligation not to act (*non facere*) in the way described above.

As far as work and employment, legislation contains a broad prohibition of discrimination that covers a great variety of situations and prohibits the distinction, exclusion, restriction or disadvantage of persons (or groups of persons)⁹ in particular on the grounds of gender, sexual orientation, racial or ethnic origin, nationality, citizenship, social origin, gender, language, health status, age, religion or belief, property, marital and family status and relationship or obligations to the family, political or other opinions, membership and activities in political parties or political movements, in trade unions or employers' organizations; discrimination on the grounds of pregnancy, maternity, paternity or gender identification is considered to be discrimination on the grounds of sex. The principle of equal treatment and non-discrimination as a key principle (not only) of labour law is enshrined in several documents both at the international level and at the level of the European Union, as well as in the legal regulations of individual states.

⁸ The most frequent cases of workplace discrimination and how to avoid them: practical guide for employers regarding equal treatment. Recommendations of the Public Defender of Rights 2023. In: *ombudsman* [online]. [2025-06-05]. Available at: <https://www.ochrance.cz/uploads-import/ESO/68-21-DIS%20ENG%20-%20kopie.pdf>.

⁹ In this context employees as well as job seekers.

II. CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

For the purposes of the subject under examination, it is important to note the Convention on the Rights of Persons with Disabilities (2006).¹⁰ The Convention adopts the social model of disability,¹¹ recognizing that disability arises from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others (Preamble, paragraph (e); Article 1). Rather than viewing disability solely as a medical condition, the Convention emphasizes the societal dimensions of disability and seeks to ensure the full inclusion and participation of persons with disabilities in all aspects of life, including social, cultural, and economic spheres (Articles 3, 19, and 27).

Discrimination on the grounds of disability was included among the protected characteristics only towards the end of the 1990s, and persons with disabilities are no longer regarded as mere “objects” to be cured, but as subjects who should no longer be excluded from society, which instead seeks to remove barriers.¹² The Convention is based on the principle of equality and guarantees persons with disabilities the full enjoyment of all human rights, while promoting their inclusion in society,¹³ including participation in working life. It promotes the rights and dignity of persons with disabilities and ensures they are not discriminated against, whereas “discrimination on the basis of disability” means any distinction, exclusion or restriction made 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 the denial of reasonable accommodation.¹⁴ Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.¹⁵ With regard to economic, social and cultural rights, the present Convention requires States Parties to take such measures to the maximum extent of their resources, and, where necessary, through international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to the obligations set forth in the present Convention which are directly applicable under international law.¹⁶ The Convention, in Article 27(1)(i) and (g), provides that States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps,

¹⁰ Hereinafter also “Convention”.

¹¹ KOLDINSKÁ, Kristina. *Rovnost a zákaz diskriminace v sociálním právu EU*. [Equality and the Prohibition of Discrimination in European Union Social Law]. In: Kristina Koldinská – Igor Tomeš – Filip Křepelka. *Sociální právo EU*. Prague: Wolters Kluwer ČR, 2017, p. 95.

¹² ŠIMEČKOVÁ, Eva. *Zákaz diskriminace v pracovněprávních vztazích*. [The Prohibition of Discrimination in Employment Relations]. Prague: Leges, 2020, p. 163.

¹³ KOLDINSKÁ, Kristina. *Rovnost a zákaz diskriminace v sociálním právu EU* [Equality and the Prohibition of Discrimination in European Union Social Law]. In: K. Koldinská – I. Tomeš – F. Křepelka. *Sociální právo EU*, p. 94.

¹⁴ Article 2 of the Convention.

¹⁵ Article 1 of the Convention.

¹⁶ Article 4 of the Convention.

including through legislation, to (inter alia) ensure that reasonable accommodation is provided to persons with disabilities in the workplace and employ persons with disabilities in the public sector.

Reasonable accommodation for the purposes of the Convention is to be understood 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*”.¹⁷ It should be emphasized, however, that the provision of reasonable accommodation should not be regarded as preferential treatment of persons with disabilities, but rather as a means of equalizing opportunities for persons with disabilities, who, as a result of receiving reasonable accommodation, are able to exercise their rights on an equal basis with persons without disabilities.¹⁸ This convention thus represented a turning point in the way the state’s approach to persons with disabilities is viewed, as it requires the state to take an active approach involving the adoption of reasonable accommodation¹⁹ (see below).

Article 28 of the Convention enshrines the right of persons with disabilities to access social protection. States Parties must recognize the right of persons with disabilities to social protection and to enjoy this right without discrimination based on disability and must take appropriate steps to ensure and promote the realization of this right, including, among other things, measures to ensure equal access of persons with disabilities to retirement benefits and programs.

It must be emphasized that the Court of Justice of the European Union has repeatedly affirmed that the EU legal framework on disability-based discrimination must be interpreted considering the UN Convention on the Rights of Persons with Disabilities. The CJEU considers the provisions of the Convention to be an integral part of the EU legal order.

III. EU LEGISLATION AND DIRECTIVE 2000/78/EC

The Treaty on the European Union explicitly acknowledges equality and non-discrimination as foundational values in Article 2. The Treaty on the Functioning of the European Union prohibits discrimination based on nationality in Article 18 and ensures equal pay between men and women in Article 157. A fundamental provision in this context is Article 19 TFEU, which empowers the European Union to adopt measures aimed at combating discrimination on grounds such as sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation. This provision has served as the legal foundation for key anti-discrimination directives and continues to inform ongoing reforms, including recent initiatives to reinforce the independence and effectiveness of national equality

¹⁷ Article 2 of the Convention.

¹⁸ POLÁK, Petr. Section 3 para 2. In: TOMŠEJ, Jakub – POLÁK, Petr – KOLDINSKÁ, Kristina – PRESSEROVÁ, Petra. *Antidiskriminační zákon a související předpisy. Praktický komentář. [The Anti-Discrimination Act and Related Regulations: A Practical Commentary]*. Prague: Wolters Kluwer ČR, 2023, p. 80.

¹⁹ ŠIMEČKOVÁ, E. *Zákaz diskriminace v pracovněprávních vztazích. [The Prohibition of Discrimination in Employment Relations]*, p. 164.

bodies. Additionally, the Charter of Fundamental Rights of the European Union includes Article 21, which prohibits discrimination on various grounds, and Article 26, which recognizes the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration, and participation in the community.

In terms of secondary law, the Council Directive 2000/78/EC of 27 November 2000 establishes a general framework for equal treatment in employment and occupation, requiring employers to provide reasonable accommodation for workers with disabilities. This directive aims to enable people with disabilities to access and participate in employment on an equal basis with others. Furthermore, the EU directives on racial equality and non-discrimination in employment cover grounds such as religion, disability, age, and sexual orientation. For the purposes of this article, it is necessary to examine this directive a little more closely.

Directive 2000/78/EC establishes a general framework for equal treatment in employment and occupation within the European Union. The Directive applies to all persons, as regards both the public and private sectors, including public bodies.²⁰ It is grounded in several fundamental principles. Firstly, it is based on the principle of liberty, ensuring that individuals have the freedom to pursue employment without facing discrimination. The principle of democracy underpins the directive, reflecting the democratic values of the European Union where all individuals should have equal opportunities. The directive also emphasizes respect for human rights and fundamental freedoms, aligning with the European Convention for the Protection of Human Rights and Fundamental Freedoms. Additionally, the principle of equality before the law is central, ensuring that all individuals are treated equally and fairly in employment and occupation.

The aim of the directive is to harmonize legislation across the member states of the European Union so that persons with disabilities can participate in the workforce, which in certain cases may require adjustments to working conditions or the work environment.²¹

Therefore, a significant provision of the Directive, similarly to the case of the Convention, is the obligation for employers to provide reasonable accommodation for persons with disabilities. According to Article 5 of the Directive, to ensure adherence to the principle of equal treatment concerning persons with disabilities, employers are required to provide reasonable accommodation. This entails taking appropriate and necessary measures, in specific cases, to enable a person with a disability to access, participate in, or progress within employment, or undergo vocational training. Such measures shall not be considered reasonable if they impose a disproportionate burden on the employer. However, this burden shall not be deemed disproportionate when adequately offset by measures available under the disability policy framework of the relevant Member State.

It should be emphasized, however, that the prohibition of discrimination does not prevent certain requirements from being established for specific professions, including

²⁰ Article 3 of the Directive.

²¹ KOMENDOVÁ, Jana. *Základy pracovního práva EU. [Fundamentals of European Union Labour Law]*. Prague: Wolters Kluwer ČR, 2016, p. 83.

those related to health status.²² Employers are not required to hire or retain individuals who are unable to perform essential job functions, or those who present a direct threat to the health or safety of themselves or others, meaning a significant risk of substantial harm.²³ It is necessary that requirements posed by the employer be justified by the need to ensure the proper performance of the job. The purpose of the above-mentioned rules concerning the prohibition of discrimination against persons with disabilities is to prevent situations in which they are treated differently due to arbitrarily established requirements that stem more from prejudice than from medical knowledge.²⁴

IV. REASONABLE ACCOMMODATION

It is appropriate to note at the outset that discrimination can be either direct or indirect. *Direct discrimination* should be understood as conduct, including omission, where one person is treated less favorably than another person is, has been, or would be treated in a comparable situation, based on a protected characteristic (such as race, ethnic origin, nationality, gender, sexual orientation, age, disability, religion, belief, or worldview). *Indirect discrimination*, on the other hand, refers to a situation where an act or omission, based on an apparently neutral provision, criterion, or practice, puts a person at a disadvantage compared to others due to a protected characteristic. The employer's obligation to provide reasonable accommodation can be described as a form of specific indirect discrimination, where the employer is required to take active measures (*facere*).²⁵

The employer is therefore obliged to take appropriate and necessary measures, in specific cases, to enable a person with a disability to access, participate in, or progress within employment, or to undergo vocational training. "Disability" that is to be compensated must be understood as a limitation which results from physical, mental, or psychological impairments and which hinders the participation of the person concerned in professional life.²⁶ Also "disability" is distinct from "sickness", and the Directive 2000/78 does not cover discrimination on the ground of sickness as such. Therefore, an illness that is not long-term or does not result in such a limitation would not fall within the scope of the Directive 2000/78. On the other hand, a temporary incapacity may qualify as a disability if it is long-term or likely to be long-term, and it substantially limits professional participation.²⁷ It is, then, up to the national court to assess whether the individual situation meets the threshold mentioned.

²² TOMŠEJ, Jakub. *Diskriminace na pracovišti. [Workplace Discrimination]*. Prague: GRADA Publishing, a.s., 2020, p. 35.

²³ Depression, PTSD, & Other Mental Health Conditions in the Workplace: Your Legal Rights. In: *U.S. Equal Employment Opportunity Commission* [online]. 12. 12. 2016 [2025-06-08]. Available at: <https://www.eeoc.gov/laws/guidance/depression-ptsd-other-mental-health-conditions-workplace-your-legal-rights>.

²⁴ Ibid.

²⁵ POLÁK, Petr. *Section 3 para 2. In: TOMŠEJ, Jakub – POLÁK, Petr – KOLDINSKÁ, Kristina – PRESSEROVÁ, Petra. Antidiskriminační zákon a související předpisy. Praktický komentář. [The Anti-Discrimination Act and Related Regulations: A Practical Commentary]*, pp. 77–78.

²⁶ Judgment of CJEU of 11 July 2006, Case C-13/05 (Chacón Navas vs. Eurest Colectividades SA).

²⁷ Judgment of CJEU 1 December 2016, Case C-395/15 (Daouidi vs. Bootes Plus SL).

As stated above, the state is required to act in this case. It must adopt legislation that imposes binding obligations on employers in the manner described. National legislation must provide clear and specific obligations for employers and an effective remedy for individuals whose right to reasonable accommodation is violated.²⁸

For the subject matter under examination, it is therefore important that mental health conditions, such as depression, may constitute a “disability” if the condition is long-term and significantly hinders the individual’s participation in professional life,²⁹ and the employer is obliged to provide reasonable accommodation. In this regard, however, it is necessary for the state (the legislator) to act and adopt the relevant legal regulation. The legislator should therefore seek to remove barriers that prevent persons with disabilities from participating in working life and from performing various jobs in both the private and public sectors.

Employers are required to provide reasonable accommodation. Therefore, they should engage in open dialogue with employees to understand their specific needs and identify appropriate solutions.³⁰

Reasonable accommodation within the meaning of Article 5 of the Directive refers to appropriate measures that are effective and practical in adapting the workplace to the needs arising from a disability. Recital 20 of the Directive provides a non-exhaustive list of such measures. Reasonable accommodation may take form of part-time work or adjusted working conditions, if it enables the employee to continue working.³¹ Other forms may include telecommuting or remote work options, job sharing, a reduced workload, additional unpaid leave for treatment or recovery, workplace modifications (such as a quiet or private workspace to reduce sensory overload), supportive supervision and communication, or mental health awareness training for managers and coworkers.³² Such measures may also consist in the employer taking steps that enable a person with a disability to retain their employment. This may include, for instance, a transfer to another position.³³ In this context, it is worth noting that the CJEU has also held that the dismissal of an employee with a disability on the grounds of failing to meet certain work-related criteria constitutes indirect discrimination, unless the employer has first implemented reasonable accommodations that would have enabled the individual to continue performing their duties.³⁴

²⁸ Judgment of CJEU of 4 July 2013, Case C-312/11 (Commission vs. Italy).

²⁹ Judgment of CJEU of 26 March 2020, Case C-397/18 (Nielsen vs Dansk Industri). In this case a Danish employee who was dismissed by his employer, following a period of absence due to depression, claimed that his dismissal was discriminatory, as his mental health condition amounted to a disability, and his employer had failed to consider reasonable accommodation. Based on this, it was reaffirmed that mental health conditions, such as depression, may constitute a “disability”.

³⁰ Accommodations for Employees with Mental Health Conditions. US Department of Labor. In: *U.S. Department of Labor* [online]. [30-04-2025]. Available at: <https://www.dol.gov/agencies/odep/program-areas/mental-health/maximizing-productivity-accommodations-for-employees-with-psychiatric-disabilities>.

³¹ Judgment of CJEU of 11 April 2013, Case C-335/11 (HK Danmark vs. Dansk almennyttigt Boligselskab).

³² Accommodations for Employees with Mental Health Conditions. In: *US Department of Labor* [online]. [2025-05-30]. Available at: <https://www.dol.gov/agencies/odep/program-areas/mental-health/maximizing-productivity-accommodations-for-employees-with-psychiatric-disabilities>.

³³ Judgment of CJEU of 10 February 2022 in Case C-485/20 (HR Rail SA).

³⁴ Judgment of CJEU of 11 September 2019, Case C-397/18 (DW v Nobel Plastiques Ibérica SA).

Under Czech law, Section 3(2) of the Anti-Discrimination Act³⁵ establishes a specific form of discrimination against persons with disabilities, consisting in the “refusal” or “failure” to implement reasonable accommodations. These accommodations are intended, inter alia, to ensure that a person with a disability has access to employment, the performance of work, or advancement within employment, including functional or other forms of promotion. Sections 3(2) to (4) of the Anti-Discrimination Act constitute the transposition of Article 5 of the Directive. This implies that Czech legislation also requires employers, where necessary in a particular case, to adopt appropriate measures enabling a person with a disability to access employment, perform work, advance in their career, or participate in vocational training—provided that such measures do not impose a disproportionate burden on the employer.

At the same time, it is important to highlight that people with mental health conditions often experience stigma, discrimination, and human rights violations.³⁶ This means that an employee who is genuinely affected by such a disorder and whose condition significantly impairs their work performance may not disclose it, due to fears of stigmatization, for example. It can also be assumed that such concerns are more likely to arise in professions associated with a certain level of prestige and social responsibility—such as that of a school headmaster, who is expected not only to fulfill managerial duties but also to serve as a moral authority. In this regard, reference must be made to the case law according to which discrimination on the grounds of disability may arise where an employer “fails” to adopt reasonable accommodations that would enable a person with a disability to access employment, perform work, or advance within employment. Such discrimination occurs where it is (or ought to be) apparent to the employer, in light of all the circumstances of the case, that the employee has a disability—understood primarily as a limitation resulting from physical or mental impairments—which, in interaction with various barriers, hinders (or may hinder) the full and effective participation of the employee in professional life on an equal basis with others. Nevertheless, the employer fails to adopt any of the reasonable accommodations that could be considered appropriate in the given circumstances and that would not impose a disproportionate burden on the employer.³⁷

In conclusion, such accommodations are generally customized, which means they must be adapted to the individual requirements of the employee and the specific characteristics of their role. Employers are usually advised to participate in a collaborative process with the employee to identify the most suitable form of support. This further underscores the importance of addressing the issue both in legal scholarship and in practice.

³⁵ Act No. 198/2009 Coll., on Equal Treatment and Legal Means of Protection against Discrimination and on Amendments to Certain Acts (the Anti-Discrimination Act), as amended (hereinafter “Anti-Discrimination Act”).

³⁶ Mental health. In: *World Health Organization* [online]. [2025-06-20]. Available at: https://www.who.int/health-topics/mental-health#tab=tab_1.

³⁷ Judgment of the Supreme Court of 8 December 2020, Case No. 21 Cdo 1844/2020.

V. HEADMASTER OF A PUBLIC SCHOOL UNDER CZECH LAW THE POSITION OF THE FOUNDER OF A PUBLIC SCHOOL IN EMPLOYMENT RELATIONS UNDER CZECH LAW AND CASE LAW

The school headmaster plays a very important role both in the “life” of the school and within the employment relationship of teaching staff. It is possible to perform multiple roles in a single position, which is also the case for the school headmaster. The headmaster’s work involves both direct teaching activities, i.e., the role of a teacher, and a significant managerial role. The headmaster also assumes the role of a leader, within which they define (naturally in cooperation with other colleagues) the organization’s vision and motivate their subordinates to fulfill this vision.³⁸ The position of a headmaster of a public school is very specific as far as legal framework is concerned and raises many questions.³⁹

From the perspective of Czech law, the school headmaster is the director of the legal entity operating the school, thus acting as its statutory body (i.e., the person representing the employer in employment relations), the director of all schools and school facilities operated by that legal entity (for example, if the headmaster is the head of a legal entity that runs both a kindergarten and a primary school, they are the headmaster of both the kindergarten and the primary school as separate activities), a managerial employee within the meaning of Section 11 of the Czech Labour Code,⁴⁰ and an employee of the legal entity operating the school, which means that, in a certain sense, they are both their own superior and subordinate. The headmaster holds a wide range of competencies, which also entails a high level of responsibility. In practice, it is almost always the headmaster who is held accountable for any shortcomings of the school or school facility in matters related to the provision of education and educational services, as well as the financial management of the institution. If a failure is identified in virtually any area within the headmaster’s competence, supervisory authorities (such as the school’s founder or the Czech School Inspectorate) may draw consequences from such a failure.

The position of the founder of a public school in employment relations under Czech law and case law is defined by a clear separation of powers between the founder and the statutory body of the school, which is the school headmaster. The founder is not the employer of the school’s employees and therefore cannot interfere directly in employment matters. The founder’s role is primarily to establish the school, appoint and dismiss the headmaster in accordance with Section 166 of the Education Act,⁴¹ and determine the principal’s salary under Section 122(2) of the Czech Labour Code. The founder may exercise control over the school as a legal entity, particularly in terms of financial oversight

³⁸ TROJANOVÁ, Irena. *Vedení lidí ve školách a školských zařízeních. [Leadership in Schools and Educational Institutions]. 2nd edition.* Prague: Wolters Kluwer ČR, 2017, p. 14.

³⁹ See for example MORÁVEK, Jakub. Nabídková povinnost při odvolání a při vzdání se vedoucího pracovního místa. [The Employer’s Duty to Offer Alternative Employment upon Removal from or Resignation of a Managerial Position]. *Právníké listy*. 2024, No. 1, pp. 24–27. The paper is focused on the jurisprudence of the Czech Supreme Court on the tender obligation in the event of removal and resignation of the executive position and points out specifics of school headmasters.

⁴⁰ Act No. 262/2006 Coll., Labour Code, as amended.

⁴¹ Act No. 561/2004 Coll., on pre-school, primary, secondary, tertiary professional and other education (the Education Act), as amended, hereinafter referred to as the “Education Act”.

under Section 27(11) of the Act on Budgetary Rules of Territorial Budgets⁴² but does not have the authority to intervene in individual employment relationships or demand internal personnel documents such as job descriptions.

The party to an employment relationship is always the legal entity operating the school. This means that any employment-related action toward an employee may only be taken by the legal entity (or a natural person acting on its behalf), and the employee may only act in employment matters toward such a legal entity. The founder therefore does not and cannot act on behalf of the employer (the school); instead, the founder serves solely as a supervisory authority over the employer in employment relations. According to Section 4(1)(a) of Act No. 320/2001 Coll., on Financial Control, as amended, the founder has the authority to monitor compliance with legal regulations (including labor law) and measures adopted by public authorities within the scope of these regulations in the management of public funds to ensure the fulfillment of tasks set by these authorities. In our view, supervisory powers also arise from Section 166(2) of the Education Act, which states that the founder—whether the Ministry, a region, a municipality, or an association of municipalities—appoints the head of a school legal entity, a contributory organization, or a state organizational unit to a managerial position based on a selection procedure announced by the founder.⁴³

This implies that the entity appointing someone to a managerial position must have certain supervisory powers and the ability to draw consequences from audit findings. Case law⁴⁴ has established *that the founder, as a body superior to the employer, holds only those rights and obligations granted by law; among other things, the founder is obliged to monitor how employers fulfill their duties in establishing and developing employment relationships, identify causes of violations of labor law, draw consequences from such findings, and continuously create conditions for compliance. The founder also has the right (or obligation) under the conditions set out in Section 166 of the Education Act to dismiss the school principal.* However, the exercise of the founder's rights must not be, according to the case law, confused with the exercise of the employer's rights; even within the scope of its legal rights and obligations, the founder does not become the employer and does not assume the employer's rights and responsibilities. It is important to note that this legal interpretation was issued at a time when Section 166(2) of the Education Act⁴⁵ included a sentence explicitly stating that the founder acts as a supervisory body over the employer in employment matters. The conclusion may still be accepted to the extent that the founder (i.e., the territorial self-governing unit) is not, *de iure*, the employer of the headmaster.

In my opinion, with a view to providing a more precise definition of the legal relationship between the founder and the headmaster of a public school, it is necessary to

⁴² Act No. 250/2000 Coll., Act on Budgetary Rules of Territorial Budgets, as amended.

⁴³ Regarding the legal framework for the appointment of principals of public schools see also SMEJKAL, Michal. Předpoklady pro výkon činnosti ředitele veřejné školy a jeho jmenování. [Requirements for the Performance of Duties and Appointment of a Headmaster of a Public School]. In: Jan Pichrt – Kristina Koldinská – Jakub Morávek (eds.). *Obrana pracovního práva. Pocta prof. JUDr. Miroslavu Bělinovi*, CSc. Prague: C. H. BECK, 2020, pp. 417–427.

⁴⁴ Judgment of the Supreme Court of 15 April 2008, Case No. 21 Cdo 854/2007.

⁴⁵ The provision in question remained in force in this wording until 31 December 2011, i.e., until the effective date of the amending Act No. 472/2011 Coll.

conduct an ‘employer test’ based on the core competences typically attributed to an employer.⁴⁶ Accordingly, the following questions should be posed: (1) Is the headmaster selected and appointed to the managerial position by the founder? (2) Is the headmaster’s salary determined by the founder? (3) Is the founder responsible for directing and supervising the headmaster’s work? (4) Is the founder entitled to issue (at least certain) instructions to the headmaster?

The answer to *the first question* is unequivocally affirmative. In accordance with Section 166(2) of the Education Act, the headmaster of a public school is appointed by the founder, following a competitive selection procedure, the particulars of which are governed by Decree No. 54/2005 Coll., on the Requirements of the Selection Procedure and Selection Committees. The discretion afforded to the founder extends to the point that they are not obliged to appoint the candidate ranked first by the selection committee—i.e., the candidate deemed most suitable in accordance with the applicable Decree—but may instead appoint any candidate who participated in the selection procedure.⁴⁷

The answer to *the second question* is also affirmative. In accordance with Section 122(2) of the Labour Code, the founder determines the salary of the headmaster, including all its components. *The third question* must likewise be answered in the affirmative. As explained above, the founder serves as a supervisory authority over the employer in employment relations.

As regards *the fourth question*—namely, whether the founder may issue (at least certain) instructions to the headmaster—I am of the view that this question must likewise be answered in the affirmative. This conclusion follows from the founder’s dual role as the appointing authority for the managerial position and as a supervisory body. It is entirely logical that to effectively perform its supervisory function, the founder must be entitled to require the headmaster to carry out certain tasks. At the same time, it must be acknowledged that the founder is also obliged to ensure that the headmaster is provided with all necessary conditions for the proper performance of his or her duties.

It is therefore evident that, in relation to the headmaster of a public school, the founder is necessarily required to perform certain tasks typically attributed to an employer. From this perspective, the founder may be regarded as a *de facto* employer in such cases and may be expected to fulfill these duties accordingly. This implies that the establishing authority performs certain duties analogous to those of an employer in relation to the school principal, even though it does not formally (*de iure*) hold that status. It is only logical that where a legal subject is vested with both the right and the duty to exercise oversight (control), it must likewise be equipped with the necessary instruments to achieve the intended outcome. However, it must be noted that the legal framework does not explicitly recognize such a status.

To conclude and summarize this part of the text, it follows that founder does not become a third party to the employment relationship. However, the founder must carefully monitor how the school headmaster performs their duties, particularly those related to their role as principal, statutory representative, and senior employer. The founder is obliged to supervise the schools it has established and to draw appropriate employ-

⁴⁶ These questions are derived primarily from Sections 2, 38, and 302 of the Labour Code.

⁴⁷ Judgment of the Supreme Court of 15 January 2016, Case No. 21 Cdo 2683/2015.

ment-related consequences from its audit findings. Moreover, the founder's supervisory activities may play a crucial role in reliably proving violations or neglect of legal obligations by the school principal.⁴⁸ I am therefore of the opinion that, as it will be elaborated further, the founder could, while fulfilling its supervisory duties, assume the role of a *de facto* employer in relation to the headmaster.

VI. REASONABLE ACCOMMODATION IN CASE OF MENTAL DISORDERS IN THE CONTEXT OF PUBLIC SCHOOL HEADMASTERS

As discussed above, the issue of providing reasonable accommodation in cases of mental disorders in the context of public school headmasters remains unclear as far as Czech legislation framework is concerned. Considering that a school headmaster plays a “three-fold role” – being an employee of the legal entity, its statutory representative, and at the same time a senior employee exercising managerial authority (even over themselves)– the question arises as to who is responsible for responding when the principal develops a mental disorder, and whether Czech legislation provides effective tools for addressing such a situation.

The relationship between the founder and the principal of a public school has been examined earlier in this article. It was concluded that, under Czech legislation, the founder does not constitute a third party to the employment relationship between the principal and the legal entity operating the school. According to the case law, the founder is therefore limited to the competences explicitly conferred by law, which include the authority to appoint the principal to a managerial position, to supervise the performance of their duties (as can be inferred through logical and teleological interpretation of the legal framework), to remove them from the managerial role, and to determine their salary.

If one were to insist strictly on a formalistic interpretation, the school principal would be required to provide reasonable accommodations to themselves in their capacity as the statutory representative of the employer, which is clearly unrealistic. Moreover, this is not an isolated issue in this context (consider, for instance, matters such as leave entitlements, obstacles to work, or the scheduling of working hours). However, such an interpretation, however, lacks both legal and practical coherence.

In my view, Czech legislation currently lacks a legal framework that would ensure the provision of reasonable accommodation in the workplace for public school principals with disabilities of a mental disorder nature. While Czech law provides support mechanisms for pupils with special educational needs, including those with mental health conditions, it does not extend comparable protections or procedural safeguards to school headmasters who may find themselves in a dual role as both employer and employee.

It must be acknowledged—and this follows clearly from the above-mentioned legal context—that the headmaster cannot be regarded as an ordinary employee and cannot be fully subordinated to the discretionary power of the employer whom he or she formally represents. Although the Supreme Court has concluded that the founder is vested solely

⁴⁸ See also SMEJKAL, Michal. *Pracovní poměr pedagogických pracovníků ve školství*. [Employment Relationship of Teaching Staff in the Education Sector]. Prague: C. H. Beck, 2023, p. 36.

with those powers expressly conferred upon it by law (as outlined above), it must be inferred that the founder is nonetheless obliged to perform certain tasks and duties *vis-à-vis* the headmaster which the headmaster, by virtue of his or her position, cannot execute towards themselves.⁴⁹ The adoption of reasonable accommodation undoubtedly constitutes a measure that the headmaster cannot implement in relation to himself or herself.

It can therefore be concluded that, with regard to public school headmasters, the existing legislative framework does not provide sufficiently clear measures to ensure the employment of persons with disabilities in public education and to ensure that reasonable accommodation is provided in the workplace for persons with disabilities, as required under Article 27(g) and (i) of the Convention on the Rights of Persons with Disabilities.

Based on the ‘employer test’ explained hereinbefore, it must be concluded that the founder performs certain tasks *vis-à-vis* the headmaster of a public school that relate to the fundamental configuration of the headmaster’s working conditions. As explained above, may be regarded as performing employer-like functions—albeit exclusively in relation to the headmaster, and not with respect to other employees of the legal entity operating the school. It is therefore the founder who could be considered responsible to monitor whether the headmaster of a public school is properly fulfilling his or her role, including whether the headmaster meets the requirement of medical fitness—both physical and mental. Where necessary, the founder is also obliged to provide reasonable accommodation, even in cases where the headmaster is found to have any kind of mental disorder.

It must also be acknowledged that, in cases involving mental disorders, it may be argued that the founder should bear responsibility to adopt reasonable accommodation in relation to the headmaster. Should the cooperation of the legal entity operating the school (i.e., the *de iure* employer) be required, I believe such cooperation could be provided, for instance, by a representative of the statutory body of that legal entity.

I am convinced that, to fulfil the purpose of Directive 2000/78/EC, Czech law must be interpreted in such a way that the establishing authority assumes certain obligations towards the school principal. Otherwise, the State’s commitments to the European Union—namely, to ensure effective protection of employees with disabilities—would remain unfulfilled. This conclusion is further reinforced by the necessity of legal certainty in the exercise of public powers, particularly considering the principle of enumerativity of public law competences. The current legal ambiguity surrounding the allocation of responsibility for reasonable accommodation in this context thus not only jeopardizes the practical realization of disability rights but also raises concerns regarding the constitutionally enshrined limits of public authority. Accordingly, legislative intervention appears both necessary and urgent to clarify the scope of obligations and to ensure that the implementation of reasonable accommodation complies with the principle of legality in public administration, as derived from the mentioned doctrine of enumerated powers.

⁴⁹ See eg. judgment of the Supreme Court of 21 December 2010, Case No. 21 Cdo 3053/2010, where the Supreme Court has adopted the view that “the divergence of interests between the employer and the employee in the context of entering into a contract (or agreement) aimed at establishing, modifying, or terminating an employment relationship precludes the possibility that the same natural person may act on behalf of the employer while simultaneously being the other contracting party as the employee, since such a person cannot adequately and concurrently safeguard both their own interests as an employee and the interests of the company as the employer.”

VII. THE NATURE OF REASONABLE ACCOMMODATION IN THE CONTEXT OF PUBLIC SCHOOL HEADMASTERS

Given the specific position of a school headmaster, it makes little sense for reasonable accommodation, in the case of a mental disorder, to take the form of, for example, reduced working hours, a decrease in workload, or a change in the type of work – in other words, measures typically envisaged for ‘ordinary’ employees. This raises the question of what form reasonable accommodation may take in the case of public school headmasters, so that it may effectively serve its intended purpose and prevent unequal treatment of the headmaster.

In my view, it is necessary to establish a specific mechanism that would allow for an external assessment of the need for reasonable accommodation (for example, by the school founder or the school board), the appointment (by the school founder) of a temporary representative to exercise managerial authority over the headmaster, and the introduction of an obligation to conduct an interactive process⁵⁰ even in cases where the managerial employee also acts as the statutory representative. Such an interactive process could consist of a dialogue between the headmaster of a public school and the school founder (or a professional body, such as a commission established for this purpose), which could be initiated either by the principal himself or herself or, for example, by the school board. The process should aim at proposing and discussing appropriate accommodation, the implementation of such measures, as well as responsibility for enforcing them, would fall under the competence of the school founder. The implementation of such a mechanism requires an amendment to the relevant legislation (such as the Education Act, and potentially the Labour Code or the Anti-Discrimination Act), as legislative reform constitutes the only systematic solution.

VIII. REMOVAL OF A HEADMASTER FROM A MANAGERIAL POSITION

The headmaster of a public school may be removed from managerial office by the founding authority. The Education Act differentiates between situations in which the founding authority is under a statutory obligation to remove the headmaster (mandatory removal) and those in which such removal lies within the discretion of the founding authority (discretionary removal). The dismissal must be made in writing⁵¹ and must be delivered⁵² to the headmaster. As regards the reason for dismissal, the Supreme Court⁵³ has held that the reason need not be stated in the written decision. However, if the validity of the

⁵⁰ See for example Cal. Code Regs. Tit. 2, § 11068 – Reasonable Accommodation: “An employer or other covered entity has an affirmative duty to make reasonable accommodation(s) for the disability of any individual applicant or employee if the employer or other covered entity knows of the disability, unless the employer or other covered entity can demonstrate, after engaging in the interactive process, that the accommodation would impose an undue hardship”. In: Cornell Law School – Legal Information Institute [online]. [2025-06-23]. Available at: <https://www.law.cornell.edu/regulations/california/2-CCR-11068>.

⁵¹ Section 73a (1) of the Labour Code.

⁵² Section 334 et seq. of the Labour Code.

⁵³ Judgment of the Supreme Court of 6 September 2017, Case No. 21 Cdo 1733/2016, or judgment of the Supreme Court of 19 March 2019, Case No. 21 Cdo 3019/2018.

dismissal is challenged by way of a lawsuit, the employer is required, in civil proceedings, to prove beyond reasonable doubt that one of the statutory grounds for dismissal existed at the time of the decision.

For the purposes of this article, I will further address the grounds for discretionary dismissal of a school principal, as permitted under Section 166(5)(a) of the Education Act. Pursuant to the provision, the founder is entitled to dismiss the school principal on the grounds of a serious breach or failure to fulfil legal obligations arising from the duties, responsibilities, and powers associated with the principal's managerial position, as identified by the inspection activities of the Czech School Inspectorate or by the founder. When assessing whether the breach or failure to fulfil legal obligations by the headmaster has reached the level of severity required by the relevant legal provision, the court may—similarly to the evaluation of the seriousness of a breach of duties by any other employee—take into account the headmaster's personal characteristics, his previous attitude towards fulfilling legal obligations, the timing and circumstances of the breach or failure, the degree of fault, the manner and intensity of the breach of specific duties, the consequences for the employer, and whether the headmaster's conduct caused damage to the employer.⁵⁴ This assessment should ensure that the decision to remove the headmaster from the managerial position reflects whether it is fair to expect the employer to continue tolerating the headmaster in that role.

It may occur that a school headmaster, due to a mental disorder, exhibits deficiencies in the performance of their duties or overlooks certain matters. Consider a situation where, as a direct consequence of the mental disorder, the headmaster commits an act that could be classified as a serious breach or non-fulfilment of their legal obligations. In such a situation, it would be necessary to determine whether the school's founder (establishing authority) was aware of the headmaster's health condition constituting a mental disorder, or whether—considering all the relevant circumstances—it should have been apparent to them that the headmaster was suffering from a health impairment that has (or could have) an impact on the performance of their legal duties.⁵⁵ At this point, it is necessary to raise the question of when (generally speaking) it may become apparent to the establishing authority that the headmaster is suffering from a mental disorder. In this context, it must be considered that, as noted above, mental illnesses are still associated with social stigma, which often leads (or may lead) affected individuals to conceal their condition as effectively as possible. As already mentioned hereinbefore, I believe this tendency is even more pronounced in cases where the individual in question holds a position typically associated with a certain degree of dignity and social standing and that of a headmaster could be, in my view, a typical example. I believe, for this purpose, the establishing authority should duly exercise its supervisory powers (in other words, act as a vigilant employer *de facto*), and through such oversight, it should take appropriate action if there is a suspicion that the headmaster may be suffering from a form of mental disorder. Moreover, the legitimate interests of children and pupils in the uninterrupted exercise of their right to education cannot be overlooked. As Moravec notes, the

⁵⁴ Judgment of the Supreme Court of 9 May 2012, Case No. 21 Cdo 908/2011.

⁵⁵ See previously mentioned judgment of the Supreme Court of 8 December 2020, Case No. 21 Cdo 1844/2020.

State assumes an active role as the guarantor of the fundamental right to education, and its corresponding obligation is to create the conditions necessary for the effective realisation of that right, typically by establishing an educational system.⁵⁶ This is currently achieved, inter alia, by assigning the school headmaster the role of guarantor of educational quality, while the establishing authority functions, in effect, as a guarantor of the headmaster's professional quality. It must be, therefore, considered that the establishing authority maintains schools because it is obliged to ensure the proper provision of pre-school and compulsory schooling within its territory—an obligation that can be fulfilled only if the position of school headmaster is held by a person fully competent to discharge that function.

It would certainly be advisable to refer the headmaster for an extraordinary occupational health assessment. In this regard, I believe that—based on the reasons outlined above—it falls within the competence of the founder to refer the headmaster to the contractual provider of occupational health services of the legal entity operating the school. As previously noted within the framework of the 'employer test', it follows from the competence of the founder to issue instructions to the headmaster for the proper fulfilment of duties arising from their position. This conclusion is, after all, consistent with the current case law of the Supreme Court, as such conduct constitutes the fulfilment of the founder's obligations as a supervisory body. The issue, however, is that even an extraordinary occupational health assessment may fail to detect the health condition of a mental disorder nature. In such a case, it would not be reasonable to expect the founder to provide reasonable accommodation.

If a situation were to arise in which a school headmaster were removed for serious failure to fulfil his or her duties pursuant to Section 166(5)(a) of the Education Act, even though such failure clearly stemmed from a disability of a mental disorder nature, and the establishing authority failed to provide reasonable accommodation (unless doing so would impose a disproportionate burden), I am of the opinion that such dismissal would not be in compliance with the applicable legal framework, and the headmaster could seek to challenge the validity of the removal. In such proceedings, not only the employer but also the school founder would have standing as a defendant, as it is the founder who formally removed the employee from their position.⁵⁷

Naturally, if it becomes evident that no available accommodation can enable the principal to fulfil their duties, the establishing authority is not obliged to insist on the continuation of such an individual in the role. The key point, however, is that a school headmaster with a disability is entitled to reasonable support and a fair assessment of their situation prior to any potential dismissal.

⁵⁶ MORAVEC, Ondřej. Art. 33 [Right to education]. In: HUSSEINI, Faisal – BARTOŇ – Michal – KOKEŠ, Marian – KOPA, Martin a kol. *Listina základních práv a svobod. [The Charter of Fundamental Rights and Freedoms]. 1st edition.* Praha: C. H. Beck, 2021, p. 939.

⁵⁷ Judgment of the Supreme Court of 15 April 2008, Case No. 21 Cdo 854/2007.

CONCLUSION

This article has underscored the legal significance of addressing disability-based discrimination in employment, regarding the obligation to provide reasonable accommodation. Through an analysis of the relevant jurisprudence of the Court of Justice of the European Union and the Supreme Court of the Czech Republic, the study has demonstrated the evolving contours of this obligation within both supranational and domestic legal frameworks. Special attention was devoted to the legal status of public school headmasters, whose unique institutional position raises complex questions regarding the attribution of responsibility for implementing reasonable accommodation. The analysis revealed that Czech legislation does not provide a sufficiently clear or effective mechanism for ensuring the fulfilment of this obligation in the context of school leadership. This legislative ambiguity may result in legal uncertainty and hinder the practical enforcement of anti-discrimination norms. Furthermore, the absence of a clearly designated responsible entity complicates the realisation of the right to equal treatment for headmasters with disabilities. The article has argued that this regulatory gap is incompatible with the Czech Republic's obligations under EU and international human rights law. Considering these findings, the article has proposed interpretative and legislative measures aimed at clarifying the scope and allocation of duties related to reasonable accommodation, while emphasizing that legislative reform remains the only systematic solution. Such reform is essential to ensure the effective protection of the rights of persons with disabilities in positions of educational leadership and to promote systemic compliance with the principle of non-discrimination. The proposed reform could consist in establishing an interactive process (drawing inspiration from the U.S. legal framework), and potentially also in providing for a broader involvement of the school board.⁵⁸

⁵⁸ For a possible use of the school board, see also, e. g. KVAPILOVÁ, Veronika. Školská rada v kontextu odchodu ředitele školy z pracovního místa vedoucího zaměstnance. [The School Board in the Context of the Removal of the Head Teacher from his Managerial Position]. *Právní rozhledy*. 2025, No. 23-24, pp. 789–792.