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SOLIDARITY AND THE CONSTITUTIONALIZATION OF EU LAW: DISABILITY RIGHTS IN LABOUR LAW

The principle of solidarity is a foundational and contested norm in EU constitutionalism, explicitly recognized in Article 3(3) TEU and the Charter of Fundamental Rights (CFREU). While traditionally viewed as a political aspiration, recent CJEU jurisprudence has transformed solidarity into a legally enforceable principle, particularly in disability rights law. This paper argues that disability rights serve as a test for the constitutional effectiveness of solidarity, demonstrating the extent to which the CJEU enforces social inclusion as a fundamental rights obligations.

*By analyzing landmark cases such as *Chacón Navas* (C-13/05), *HK Danmark* (C-335/11 and *Ring and Werge* (C-335/11 & C-337/11), and *DW v. Nobel Plásticos Ibérica SA* (Case C-397/18) among others, this study illustrates how the CJEU has progressively aligned EU disability law with international human rights standards, particularly the UN CRPD. The Court's interpretation of anti-discrimination law and reasonable accommodation obligations has solidified solidarity as a legally binding principle, imposing direct obligations on employers, institutions, and Member States.*

Drawing on constitutionalization theories (De Búrca, 2000, 2011, 2017; Weiler, 1999; Jankov, 2007), this paper situates CJEU jurisprudence within EU constitutional transformation, arguing that disability rights provide a benchmark for evaluating the enforceability of solidarity. The study concludes that solidarity is progressively gaining legal force through judicial interpretation, and its broader application in EU law depends on further judicial and legislative developments, particularly in its application by Member States.

Keywords: EU Disability Law, European Accessibility Act, UN Convention on the Rights of Persons with Disabilities (CRPD), Reasonable Accommodation, Court of Justice of the European Union (CJEU)

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1. INTRODUCTION

The principle of solidarity is deeply embedded in the European Union's (EU) constitutional framework, explicitly enshrined in Article 3(3) TEU and further reinforced by the Charter of Fundamental Rights of the European Union (CFREU). As a foundational principle, solidarity has shaped multiple aspects of EU law, particularly in areas of economic governance, social policy, and labour rights. However, the precise legal enforceability of solidarity — especially in its application to fundamental rights protections — remains an developing issue. While the EU Treaties recognize solidarity, its transformation from a guiding value into a binding legal obligation depends largely on judicial interpretation, particularly through the case law of the Court of Justice of the European Union (CJEU). This paper argues that disability rights provide a critical testing ground for assessing the constitutional effectiveness of solidarity as an enforceable principle in EU law.

The CJEU's evolving jurisprudence on disability rights demonstrates how solidarity is moving beyond political rhetoric to become a concrete legal norm that requires specific obligations from employers, national authorities, and economic actors. Through a series of landmark rulings, the Court has expanded the scope of disability protections, progressively reinforcing the duty to accommodate persons with disabilities in the labour market. Cases such as *Chacón Navas* (C-13/05), *HK Danmark and Ring and Werge* (C-335/11 & C-337/11) and *DW v. Nobel Plastiques Ibérica SA* (Case C-397/18) illustrate the Court's role in translating solidarity into an operational legal standard. By requiring reasonable accommodations and rejecting disproportionate burden defenses, the CJEU has ensured that solidarity is not merely a principle of moral duty but a legally binding requirement under EU law.

This study situates the role of the CJEU within the broader theoretical debates on EU constitutionalism, drawing on the works of De Búrca (2000, 2005, 2017), Weiler (1999), and Jankov (2007). De Búrca has argued that the EU's fundamental rights framework has evolved significantly through judicial interpretation, with the CJEU acting as a key constitutional actor in translating abstract legal principles into enforceable norms (De Búrca, 2017). Similarly, Weiler's theory of EU constitutional transformation emphasizes the role of the judiciary in shaping the European legal order, particularly by establishing the supremacy and direct effect of fundamental rights protections. These perspectives reinforce the argument that solidarity, when examined through the lens of disability rights litigation, provides a critical measure of how deeply embedded and legally operational this principle is within EU constitutional law.

The first part of this paper (Section 2) examines the legal framework of disability rights and solidarity in EU law, focusing on how the CFREU (Articles 21 and 26) and the UN Convention on the Rights of Persons with Disabilities (CRPD) have influenced the CJEU's jurisprudence. This section highlights how these normative instruments shape the legal enforceability of solidarity, emphasizing the transition from an aspirational commitment to a legal obligation.

The analysis then turns to CJEU case law (Section 3), which illustrates how the Court has gradually aligned its rulings with international human rights law, expanding the

enforceability of solidarity-based obligations. The discussion begins with *Chacón Navas* (C-13/05), where the CJEU initially adopted a restrictive medical definition of disability, significantly limiting the scope of anti-discrimination protections under Directive 2000/78/EC (the Employment Equality Directive). However, subsequent rulings—most notably —demonstrated a clear shift toward a rights-based approach, reinforcing solidarity as a legally enforceable norm in the context of disability inclusion, having finally *DW v. Nobel Plásticos Ibérica SA* (Case C-397/18) setting a structured methodology for assessing the proportionality of accommodation duties.

By analyzing disability rights as a constitutional test for solidarity, this paper aims to demonstrate that the CJEU has played a decisive role in shaping the legal meaning and enforceability of this principle. The Court's rulings reveal a broader constitutional shift, where solidarity is being embedded into EU law not merely as a political aspiration but as a binding legal duty. The ability of the EU legal system to enforce solidarity in disability rights cases provides insight into its broader constitutional effectiveness, raising crucial questions about the future trajectory of EU constitutionalism and the role of fundamental rights protection within it.

2. THE LEGAL FRAMEWORK FOR DISABILITY RIGHTS AND SOLIDARITY IN EU LAW

This section aims to contextualize the constitutionalization of the principle of solidarity within the framework of EU disability rights. It outlines the normative foundations of solidarity in EU primary and secondary law, with a particular focus on the Charter of Fundamental Rights of the European Union (CFREU) and the transformative impact of the UN Convention on the Rights of Persons with Disabilities (CRPD). The analysis intends to demonstrate how the CRPD has shifted the legal paradigm from a medical to a biopsychosocial model of disability, thereby reinforcing solidarity as a binding legal norm. By examining the obligations of EU institutions and Member States under this developing framework, the section seeks to establish the legal groundwork for understanding how solidarity functions as an enforceable constitutional principle within EU labour and anti-discrimination law. This foundation will support the later analysis of the CJEU's jurisprudence in giving practical effect to these obligations.

2.1. *The Role of the Principle of Solidarity in the Constitutionalization of EU Law*

The principle of solidarity is a fundamental value of the European Union (EU), enshrined in its constitutional framework and underpinning its commitment to social justice, non-discrimination, and inclusivity. Initially recognized as a political and moral principle, solidarity has evolved into an operational legal standard, progressively reinforced by EU primary law, the Charter of Fundamental Rights of the European Union (CFREU), and the jurisprudence of the Court of Justice of the European Union (CJEU) (De Búrca, 2005). In the field of disability rights and employment law, solidarity has been constitutionalized through judicial interpretation, imposing obligations on both Member States and private actors to ensure equal access to the labour market and social protection (O'Leary, 2005).

The legal embedding of solidarity can be traced to Article 3(3) of the Treaty on the European Union, which explicitly defines the EU's objectives regarding economic and social progress, equality, and inclusion. This provision institutionalizes solidarity as a constitutional objective, mandating the EU to actively combat social exclusion, foster social justice, and ensure equality. However, as De Búrca (2021a) argues, while solidarity is embedded in the EU Treaties, its justiciability has historically been limited, requiring judicial interpretation to transform it into enforceable legal obligations (De Búrca, 2021a).

The Charter of Fundamental Rights of the European Union (CFREU) plays a central role in reinforcing the justiciability of solidarity, particularly in the areas of labour and disability rights. By enshrining key principles that safeguard equality, social justice, and inclusion, the CFREU establishes solidarity as a legally enforceable standard within EU law (De Búrca, 2021a).

A cornerstone of this framework is Article 21 CFREU, which prohibits discrimination on various grounds, including disability, ensuring that all individuals are protected from unfair treatment based on sex, race, ethnic or social origin, genetic features, language, religion, political or other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation. This provision underscores the EU's commitment to fostering an inclusive society, where access to employment and social participation is guaranteed on an equal basis.

Complementing this broad anti-discrimination safeguard, Article 26 CFREU specifically recognizes the rights of persons with disabilities, affirming the Union's duty to facilitate their independence, social and occupational integration, and full participation in the community's life. This principle aligns with the EU's broader commitment to social inclusion, reinforcing the obligation of both Member States and employers to remove barriers that hinder full participation in society.

Further embedding solidarity within EU labour law, Article 27 CFREU strengthens social rights in employment, mandating that workers or their representatives be guaranteed information and consultation in good time, as provided for by Union law and national legislation. This provision ensures that labour protections are not only theoretical commitments but legally binding obligations, reinforcing the active participation of workers in decision-making processes that affect their employment conditions.

The legal authority of the CFREU was significantly strengthened by the Treaty of Lisbon (2009), making the Charter legally binding and enforceable before the CJEU and national courts (Schiek, 2017). The CJEU has since expanded the role of solidarity in disability law, as evidenced in *HK Danmark* (C-335/11 & C-337/11), where the Court aligned EU disability law with the UN Convention on the Rights of Persons with Disabilities (CRPD), emphasizing employer obligations to provide reasonable accommodations.

The constitutionalisation of solidarity has also been analysed by De Búrca (2021a; O'Leary, 2005), who argues that solidarity has progressively evolved from a moral imperative into a legally enforceable principle. This transformation is clear in CJEU jurisprudence, which has reinforced the obligation of both public and private actors to remove barriers to inclusion, ensure accessibility, and implement reasonable accommodation measures to be later developed in this research.

2.2. The CJEU's Role in Transforming Solidarity into an Enforceable Legal Norm

The principle of solidarity has developed from a foundational EU value into an operational legal standard shaped by judicial interpretation and gradually embedded within EU jurisprudence (Jankov, 2007). The CJEU has played a central role in defining and reinforcing solidarity, particularly in cases concerning social security coordination, energy policy, asylum law, and fundamental rights (Schiek, 2017). The following chronological analysis illustrates how solidarity has been progressively constitutionalized and enforced through the CJEU's case law, transforming it from an aspirational principle into a legally binding norm.

The earliest judicial references to solidarity appeared in the late 1960s, marking the beginning of its legal recognition. In *Stauder v City of Ulm* (C-29/69), the CJEU, then known as the European Court of Justice (ECJ), laid the groundwork for integrating fundamental rights into EU law, a development that would later support the justiciability of solidarity in areas such as social justice and anti-discrimination. This was followed by a dozen cases between 1969 and the adoption of the Single European Act, where the Court referenced solidarity in the context of economic and social cohesion (De Búrca, 2005).

A significant expansion of solidarity occurred in the field of social security coordination (European Council, 2000). In *Martínez Sala v Freistaat Bayern* (C-85/96) the ECJ affirmed that the principle of solidarity required equal treatment in access to social security benefits, reinforcing that EU citizenship entails rights to non-discriminatory access to welfare across Member States. This approach was further developed in *Grzelczyk v Centre Public d'Aide Sociale d'Ottignies-Louvain-la-Neuve* (C-184/99), where the Court famously ruled that “*Union citizenship is destined to be the fundamental status of nationals of the Member States*”, highlighting that solidarity includes guaranteeing basic social rights to EU citizens moving within the Union.

Beyond social security, the CJEU extended the principle of solidarity into energy law in *the Republic of Poland v European Commission* (Case T-883/16). The General Court ruled that solidarity must be respected in the EU's energy policies, particularly in balancing national interests in the internal energy market (Joined Cases C-715/17, C-718/17 and C-719/17). This case marked a turning point, confirming that solidarity was not limited to individual rights but also encompassed collective responsibilities between Member States.

The principle took on an even more compelling role in asylum and migration law with Joined Cases C-715/17, C-718/17, and C-719/17. Here, the Court ruled that Poland, Hungary, and the Czech Republic had violated EU law by refusing to comply with the provisional mechanism for the relocation of asylum seekers. The judgment reinforced that solidarity is a legally binding obligation, requiring Member States to share responsibilities in times of crisis. This decision was widely recognized as a landmark ruling, confirming that solidarity is enforceable and not merely a political aspiration (Schiek, 2017).

The COVID-19 pandemic further tested the application of solidarity in the EU legal order. The EU's coordinated response, including joint public health measures and financial recovery mechanisms, demonstrated the binding nature of solidarity in crisis management. The CJEU's rulings and EU institutions' actions during the pandemic underscored the principle's relevance in ensuring collective action among Member States (Joppe, 2021).

As these cases illustrate, the CJEU has progressively shaped solidarity into an enforceable legal standard, integrating it into various sectors of EU law. From social security and welfare rights to energy policy, asylum law, and public health crises, solidarity has evolved into a concrete legal obligation, binding Member States and reinforcing the EU's constitutional commitment to social justice and non-discrimination (De Búrca, 2021a). The constitutionalization of solidarity remains a defining feature of the EU's legal development, ensuring that fundamental rights and obligations extend beyond national borders to promote transnational cohesion and shared responsibility.

2.3. The CRPD's Role in Reshaping Disability Rights Regime in the EU

The following examination addresses the transformative impact of the CRPD on the EU's approach to disability rights, particularly in reshaping legal definitions and state obligations. It begins by tracing the shift from a traditional medical model to a biopsychosocial understanding of disability, emphasizing how this reconfiguration reframes disability as the product of interaction with societal barriers rather than a purely individual condition. Building on this conceptual foundation, the analysis then moves toward the practical implications of the CRPD's ratification, highlighting the legally binding responsibilities imposed on Member States to revise domestic legislation, ensure accessibility, and promote inclusive practices across employment and public life.

2.3.1. The Shift from a Medical Model to a Biopsychosocial Model

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) has profoundly reshaped the EU's legal framework on disability rights, fostering a decisive shift from the traditional medical model — which conceptualizes disability as an individual impairment requiring treatment — to the biopsychosocial model, which acknowledges that disability results from the interaction between impairments and societal barriers. The EU's ratification of the CRPD in 2010 marked a transformative moment in its disability rights regime, embedding a human rights-based approach into EU primary and secondary law, thereby reinforcing the principle of non-discrimination and social inclusion (De Búrca, 2021b).

The medical model of disability, historically dominant in legal and policy frameworks, positioned disability as a personal misfortune, justifying exclusionary policies and institutional practices that emphasized rehabilitation and treatment over structural change. In contrast, the biopsychosocial model, as articulated in the CRPD, reframes disability as a social construct shaped by legal, economic, and environmental barriers. Article 1 of the CRPD encapsulates this paradigm shift, defining persons with disabilities as: '*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.*' (CRPD, 2006, Art. 1).

This definition embeds two foundational legal principles. First, disability is not an inherent or immutable characteristic, but rather a dynamic condition shaped by exclusionary societal structures. Second, the removal of structural and attitudinal barriers — rather than mere medical intervention — is essential to achieving full and effective participation in society.

As de Búrca (2010) observes, the adoption of the CRPD has been instrumental in redefining disability within the EU legal order, compelling institutions and courts to embrace an inclusive, rights-based perspective that shifts the burden of adaptation from individuals to legal and institutional structures (De Búrca, 2010). This shift has been reflected in EU secondary legislation, particularly in Directive 2000/78/EC (the Employment Equality Directive), which prohibits disability-based discrimination in employment and mandates reasonable accommodation to promote workplace accessibility (Council of the European Union, 2000).

The CJEU has progressively incorporated CRPD principles into its jurisprudence, further consolidating the biopsychosocial model as a binding legal standard. Landmark cases such as *HK Danmark* (C-335/11 & C-337/11) and *Ring and Werge* (C-335/11 & C-337/11) have confirmed that disability must be understood in relation to barriers that prevent participation in professional life, thereby expanding the scope of protection under EU disability law. The CJEU's role in interpreting and enforcing the biopsychosocial model will be addressed in detail in a subsequent section of this paper.

Furthermore, the CRPD's ratification imposes binding legal obligations on both the EU and its Member States, requiring them to ensure accessibility, provide reasonable accommodation, and guarantee equal participation in employment, education, and public life. These obligations have necessitated substantial legislative and policy adjustments across national legal frameworks, an issue that will be examined in the following section.

The incorporation of the biopsychosocial model into EU law represents a paradigm shift in disability rights, aligning EU legal standards with international human rights obligations and reinforcing the constitutional principle of solidarity. By rejecting the individualized, deficit-oriented approach of the medical model, the CRPD has established a new legal norm, wherein disability is understood not as an isolated impairment, but as a condition shaped by societal and environmental factors. As Schiek (2017) argues, this transformation has reinforced transnational solidarity, compelling Member States to harmonize their legal frameworks in pursuit of a more inclusive and non-discriminatory European society.

2.3.2. The Obligations of Member States under the CRPD

The ratification of the CRPD imposes legally binding obligations on EU Member States, requiring them to adopt measures that promote full inclusion, accessibility, and equality for persons with disabilities. These commitments demand legislative and policy reforms across key areas, including employment protections, accessibility, and legal capacity, ensuring that national legal frameworks align with the Convention's principles.

A central requirement of the CRPD is the harmonisation of domestic legislation with its provisions. Member States must introduce laws that safeguard the rights of persons with disabilities and eliminate structural barriers to their full participation in society. Within the EU legal framework, these obligations have been reflected in Directive 2000/78/EC (the Employment Equality Directive, which prohibits disability-based discrimination in employment and mandates reasonable accommodation in the workplace. The influence of the CRPD has led to CJEU case law reinforcing these duties, affirming that employers are

required to make necessary adjustments to ensure equal access to employment, a matter that will be further examined in the following section.

Beyond employment, accessibility remains a fundamental obligation under the CRPD, requiring states to remove physical, digital, and informational barriers that prevent equal participation in public life. This commitment has been integrated into EU law through the European Accessibility Act (Directive 2019/882), setting binding standards for products, services, and public spaces across Member States. Courts have recognized that failure to guarantee accessibility constitutes indirect discrimination, necessitating systemic legal and policy reforms at the national level.

A comparative perspective on CRPD implementation provides valuable insight into the challenges and successes of integrating its principles into domestic legal frameworks. As de Búrca (2021b) highlights, Argentina serves as a notable case study, having incorporated the CRPD into constitutional law in 2014. This move prompted extensive legal reforms, particularly in the areas of legal capacity and education rights, and led to landmark judicial rulings that reinforced the direct applicability of CRPD principles. Civil society organizations played a crucial role in pressuring legislators and courts to advance disability rights, demonstrating the impact of advocacy in enforcing international human rights commitments. A particularly significant case involved a student with Down syndrome who was denied an official school certificate despite completing secondary education. The Argentine courts ruled that such exclusion violated the CRPD's commitment to inclusive education, compelling national authorities to reform education policies accordingly.

The obligations imposed by the CRPD on EU Member States require continuous legal and policy adaptation to align domestic frameworks with evolving international human rights standards. While legislative progress has been made, effective enforcement and uniform implementation remain key challenges. The next section will further examine the CJEU's role in interpreting and enforcing these obligations, shedding light on the judicial mechanisms that have strengthened disability rights across the EU legal order.

3. THE CJEU'S JURISPRUDENCE: TESTING THE CONSTITUTIONAL EFFECTIVENESS OF SOLIDARITY

The CJEU has played a central role in embedding solidarity as an enforceable legal principle, particularly in the area of disability rights and employment law. Early case law reflected a restrictive interpretation of social rights, limiting their direct applicability. However, over time, the CJEU has expanded the enforceability of solidarity, particularly through its engagement with the UN Convention on the Rights of Persons with Disabilities (CRPD) and its integration into EU labour law.

This section examines how the CJEU's jurisprudence operationalizes the constitutional principle of solidarity through the lens of disability rights in employment. It explores the Court's developing interpretation of 'disability', tracing its departure from a restrictive, medicalized model to a more inclusive, biopsychosocial approach in line with the CRPD. By analyzing key cases such as *Chacón Navas v. Eurest Colectividades SA* (Case C-13/05), *HK Danmark (Ring and Skouboe Werge)* (Joined Cases C-335/11 and C-337/11), *HR Rail*

SA v. XXXX (Case C-485/20) and DW v. Nobel Plastiques Ibérica SA (C-397/18) the section aims to illustrate how the Court has progressively strengthened the enforceability of reasonable accommodation duties and curtailed the misuse of the disproportionate burden defense. This jurisprudence not only affirms the material dimension of solidarity but also positions the CJEU as a constitutional adjudicator, ensuring that EU law aligns with both internal labour standards and international human rights commitments.

3.1. The evolution from the Medical Model to the Biopsychosocial Model

In *Chacón Navas v. Eurest Colectividades SA* (Case C-13/05), the CJEU addressed, for the first time, the definition of disability under Directive 2000/78/EC, which prohibits discrimination in employment. The case concerned Ms. Sonia Chacón Navas, who was dismissed by her employer while on prolonged sick leave. The Court made a clear distinction between sickness and disability, defining disability as a limitation resulting from physical, mental, or psychological impairments that hinders participation in professional life and is likely to be long term. Since the Directive does not cover sickness as such, the Court concluded that Ms. Chacón Navas's dismissal did not fall within its scope. This judgment has been widely criticized for adopting a narrow, medicalized definition of disability, which focuses exclusively on the individual's impairment rather than societal and structural barriers that contribute to exclusion. By framing disability in terms of long-term impairments, the Court reinforced a *restrictive approach* that failed to acknowledge the role of external factors in shaping the lived experiences of persons with disabilities, limiting the scope of legal protection available under EU anti-discrimination law.

In *HK Danmark (Ring and Skouboe Werge)* (Joined Cases C-335/11 and C-337/11), the Court of Justice of the European Union (CJEU) revisited the concept of disability, marking a significant shift toward a more inclusive and dynamic interpretation. The cases involved two employees with long-term health conditions that limited their ability to work, raising questions about the scope of protection under Directive 2000/78/EC. In its ruling, the Court explicitly referenced the CRPD and expanded the definition of disability to include conditions resulting from long-term impairments that, in interaction with various barriers, may hinder full and effective participation in professional life on an equal basis with others. By recognizing that disability is not solely an inherent limitation but is also shaped by external societal factors, the Court aligned its interpretation with the *biopsychosocial model*, shifting the focus from the individual's condition to the broader need for societal adjustments. This ruling departed from the restrictive medical model previously adopted in *Chacón Navas*, reinforcing the idea that legal protections must account for the role of structural and environmental barriers in shaping disability and promoting a more holistic approach to inclusion.

Moreover, from a constitutional perspective, *HK Danmark* proves that solidarity is not an abstract value but an operational principle that courts can actively enforce. It also highlights the CJEU's role as a constitutional actor, ensuring that EU law aligns with international human rights commitments. As the ruling established a direct legal link between solidarity and concrete workplace obligations, the idea that solidarity entails active structural adjustments rather than passive non-discrimination was reinforced. The Court also rejected

arguments that economic constraints alone could justify non-compliance, emphasizing that: *'Economic considerations must be balanced against fundamental rights and the principles of social inclusion and equal treatment.'* This case is constitutionally significant because it confirms that solidarity is not just a guiding value — it has material, enforceable consequences in EU labour law. The principle of reasonable accommodation ensures that solidarity is embedded in legal obligations, providing a litmus test for its effectiveness in EU constitutionalism.

3.2. How CJEU rulings reject disproportionate burden defenses

Under Article 5 of Directive 2000/78/EC, employers are obligated to provide reasonable accommodations to enable persons with disabilities to have equal access to employment unless such accommodations would impose a disproportionate burden on the employer. The CJEU has consistently interpreted this provision in a manner that reinforces the enforceability of disability rights by narrowing the scope of the disproportionate burden defense and ensuring that economic considerations do not override fundamental equality rights.

In the *HK Danmark (Ring and Skouboe Werge)* (Joined Cases C-335/11 and C-337/11) judgment, the CJEU reinforced the *obligation of employers to provide reasonable accommodation* for employees with disabilities, emphasizing the importance of ensuring equal access to employment. The Court ruled that employers must implement appropriate measures to enable individuals with disabilities to enter, participate in, and advance in the workplace, provided that such accommodations do not impose a disproportionate burden on the employee.¹ These measures may include adjustments to working hours, modifications to job tasks, or the provision of specialized equipment to ensure that employees with disabilities can perform their roles effectively. Most significantly, the Court held that failure to provide reasonable accommodation constitutes discrimination under Directive 2000/78/EC, highlighting the necessity of active and structural interventions to achieve genuine workplace inclusion.² This ruling underscores the principle of solidarity, imposing positive obligations on employers and recognizing that exclusion is not merely a result of individual impairments but is shaped by societal structures and workplace environments. By affirming that the legal duty to accommodate is essential to prevent discrimination and promote full participation, the CJEU strengthened the rights-based approach to disability, ensuring that legal protections go beyond mere formal equality and instead require concrete, proactive measures to foster workplace inclusion.

This ruling establishes a high threshold for invoking the disproportionate burden defense. Employers must demonstrate that all avenues for reasonable accommodation have been exhausted, including seeking public funding or support measures. This

¹ Court of Justice of the European Union (CJEU) (2013) *HK Danmark (Ring and Skouboe Werge)* (Joined Cases C-335/11 & C-337/11), *ECLI:EU:C:2013:222*, paragraph 42: 'It is for the national court to assess whether the burden resulting from such measures is disproportionate, taking into account, in particular, the financial and other costs entailed, the size and financial resources of the organization or undertaking, and the possibility of obtaining public funding or any other assistance.'

² Court of Justice of the European Union (CJEU) (2013) *HK Danmark (Ring and Skouboe Werge)* (Joined Cases C-335/11 & C-337/11), *ECLI:EU:C:2013:222*, paragraph 54: 'It follows that a failure to provide reasonable accommodation to a person with a disability may constitute discrimination within the meaning of Article 2(2)(b)(ii) of Directive 2000/78.'

interpretation reinforces solidarity by ensuring that economic arguments cannot override the fundamental right to equal treatment.

Further reinforcing this approach, in *HR Rail SA v. XXXX* (Case C-485/20), the CJEU clarified that an employer's duty to provide reasonable accommodation may include reassignment to another position within the company. This decision confirms that reasonable accommodation is not limited to modifying a current role, but may also include offering alternative employment within the organization. It ensures that employers cannot dismiss disabled workers without first considering alternative employment arrangements, reinforcing a solidarity-based approach to disability rights enforcement (Case C-485/20).³

The CJEU's ruling in *DW v. Nobel Plastiques Ibérica SA* (C-397/18) strengthened the duty of reasonable accommodation by refining the disproportionate burden defense and reinforcing the interpretative approach established in *HK Danmark and HR Rail SA*. The Court reaffirmed that economic considerations alone cannot override fundamental equality rights and provided a structured framework for assessing claims of disproportionate burden, enhancing legal certainty. Additionally, the judgment confirmed that disability under EU law includes any long-term impairment, whether from illness or injury, that significantly limits workplace participation, preventing employers from narrowly interpreting the concept to exclude certain conditions. This ruling further consolidated solidarity-based accommodations in employment law and ensured a broad, inclusive approach to disability rights (Case C-397/18).⁴

More critically, the ruling clarified and codified a structured test for evaluating whether an employer can validly invoke the disproportionate burden defense under Article 5 of Directive 2000/78/EC. While *HK Danmark* had emphasized that failure to provide reasonable accommodation constitutes discrimination, and *HR Rail SA* had extended accommodation duties to include reassignment to another position, in *DW v. Nobel Plastiques Ibérica SA* (C-397/18), the CJEU refined the assessment framework for the disproportionate burden defense, requiring employers to meet a three-pronged test before claiming undue hardship in providing reasonable accommodation.

First, employers must substantiate the financial burden with objective and quantifiable evidence, proving that the costs of accommodation would impose a severe strain on the

³ Court of Justice of the European Union (CJEU) (2022) *HR Rail SA v. XXXX* (Case C-485/20), *ECLI:EU:C:2022:85*, paragraph 34: 'The concept of 'reasonable accommodation' must be understood as referring to all measures that enable a person with a disability to have access to, participate in, or advance in employment unless such measures would impose a disproportionate burden on the employer.'

⁴ Court of Justice of the European Union (CJEU) (2019) *DW v Nobel Plastiques Ibérica SA* (Case C-397/18), *ECLI:EU:C:2019:703*. Paragraph 41: 'The concept of 'disability' within the meaning of Directive 2000/78 presupposes a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life.' Paragraph 58: 'The prohibition of any discrimination on grounds of disability and the obligation to provide reasonable accommodation for disabled persons are intended 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.'

Paragraph 60: 'A failure to provide reasonable accommodation in accordance with Article 5 of Directive 2000/78 in respect of a person with a disability may constitute indirect discrimination within the meaning of Article 2(2)(b)(ii) of that directive.'

business's economic sustainability rather than constituting a routine expense. Second, they must demonstrate that the accommodation is unfeasible given the company's economic and structural capacity, considering factors such as size, financial resources, and operational framework. Lastly, before invoking financial constraints, employers are obligated to exhaust all available public support mechanisms, including government subsidies and alternative assistance programs, ensuring that they have explored all potential avenues before refusing accommodation. This ruling reinforced accountability and legal certainty, preventing employers from relying on vague economic justifications to deny accommodations.

By formalizing this test, the CJEU not only reinforced the restrictive nature of the disproportionate burden defense but also heightened the evidentiary threshold for employers seeking to rely on it. This judgment further aligns with the CJEU's jurisprudence in ensuring that solidarity remains a binding legal principle, preventing economic arguments from undermining the fundamental right to equal treatment and workplace inclusion.

Thus, the *DW v. Nobel Plásticos Ibérica SA* case does not introduce a radically new principle but rather systematizes and strengthens the existing legal framework by providing a structured methodology for assessing the proportionality of accommodation duties. In doing so, it ensures that employers must exhaust all reasonable avenues before invoking financial constraints as a defense against the duty to accommodate workers with disabilities.

From a constitutional perspective, these rulings affirm that solidarity is not merely an aspirational or declaratory value but an actively enforced principle within the EU legal order. The CJEU's jurisprudence demonstrates how judicial interpretation can transform abstract constitutional ideals into concrete, enforceable obligations. By progressively embedding solidarity into disability rights law, the Court has established clear legal tests that not only guide national courts but also set binding standards for employers and public authorities across the EU.

Moreover, the evolution of CJEU case law underscores that solidarity, as applied in the context of disability rights, has implications beyond individual employment disputes. The structured tests developed by the Court serve as a blueprint for domestic courts, effectively addressing the challenges of implementation and compliance at the Member State level. By setting clear legal thresholds, the Court mitigates the risk of divergent national applications and strengthens uniformity in the protection of disability rights across the EU. This approach also aligns EU labour law with international human rights obligations, particularly the CRPD, demonstrating that the constitutional effectiveness of solidarity is not confined to EU legal instruments, but extends to the broader global human rights framework.

4. CONCLUSION

The principle of solidarity, long regarded as a fundamental yet aspirational value of the EU, has increasingly become an enforceable constitutional norm, particularly in the field of disability rights. Through the jurisprudence of the CJEU, solidarity has been transformed from a guiding ideal into a binding legal principle, shaping the obligations of employers, institutions, and national authorities. The case law examined in this paper

demonstrates that disability rights serve as a key testing ground for the effectiveness of solidarity as a pillar of EU constitutionalism.

The progressive judicial interpretation of disability rights protections — from *Chacón Navas*' restrictive medical definition to the rights-based approach of *HK Danmark and Ring and Werge* — illustrates the CJEU's role as a constitutional enforcer. The Court has not only aligned EU law with the CRPD, but has also clarified the direct legal obligations that flow from the principle of solidarity, particularly in the labour market. The principle of reasonable accommodation, now firmly embedded in EU disability law, reflects a tangible enforcement mechanism for solidarity, ensuring that structural barriers to inclusion are actively dismantled rather than merely acknowledged.

From a constitutional perspective, the CJEU's jurisprudence on disability rights confirms that solidarity is not merely a symbolic or political principle but a legally operational mechanism within the EU legal order. The Court's rulings illustrate how abstract constitutional values acquire legal significance through judicial enforcement, reinforcing the broader constitutionalization of EU fundamental rights law. This trajectory aligns with De Búrca's argument that the CJEU has functioned as a key actor in translating fundamental rights principles into enforceable norms, as well as Weiler's view that the constitutional evolution of the EU has been driven by judicial interpretation rather than legislative codification alone.

However, while the constitutionalization of solidarity is evident in disability rights law, its broader application to other areas of EU social policy remains an open question. The judicial enforcement of solidarity in employment discrimination cases provides a framework for assessing its effectiveness, but further legal developments will determine whether this principle extends beyond specific contexts to become a generalized standard across EU constitutional law.

Ultimately, the CJEU's jurisprudence confirms that solidarity is no longer an abstract political commitment but a legally enforceable norm shaping EU labour law. As national courts apply the proportionality test established in *DW v. Nobel Plastiques Ibérica SA* and related rulings, the effectiveness of solidarity will continue to be tested in practice. The structured legal tests developed by the Court serve as guidelines for domestic courts, ensuring uniformity in disability rights protection across Member States and enhancing compliance with the CRPD. By setting precise legal standards for reasonable accommodation and narrowing the scope of disproportionate burden defenses, the CJEU has mitigated the challenges of national implementation and reinforced solidarity as a binding constitutional obligation.

As the EU continues to grapple with social, economic, and political challenges, the future trajectory of solidarity as a constitutional norm will depend on the extent to which the CJEU and EU institutions continue to reinforce its legal enforceability. The evolution of EU disability rights law provides a clear precedent for how solidarity can be judicially enforced, offering a model for future constitutional developments in other areas of social rights protection. In this sense, the effectiveness of solidarity in EU constitutionalism will continue to be tested in legal disputes, policy implementation, and further jurisprudential developments.

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