

and whether it would be reasonable to impose a duty to provide such an effective accommodation.⁶⁸ Otherwise, the duty to provide reasonable accommodation would oblige the collectivity to make certain adjustments, here and there, to do what was needed in order to avoid excluding particular disabled people; but disabled people generally would remain inhabitants of structures conceived by and made for others—structures which, by their very nature, will render them forever strangers and outsiders.

⁶⁸ It has been pointed out that Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303 of 2.12.2000, p 16) creates an ambiguity in this respect. Under Art 2(2)(b) of the Directive:

indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having ... a particular disability ... at a particular disadvantage compared with other persons unless: (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or (ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.

This suggests that, provided the employer provides effective accommodation to the disabled employee, the employer will be authorised to maintain provisions, criteria or practices which put disabled people at a particular disadvantage. Ad hoc, individualised compensation measures risk becoming substitutes for wider scale modifications especially in the built environment or the organisation of work, despite the disincentive this could represent for disabled people. This danger is highlighted by L Waddington and A Hendriks, 'The expanding concept of employment discrimination in Europe: from direct and indirect discrimination to reasonable accommodation discrimination' (2002) 18 *International Journal of Comparative Labour Law and Industrial Relations* 403.