

Caroline Bradley: EU Law Spring 2016

Please answer one of the following questions .

Question 1:

Arcadia is a Member State of the European Union.

Beata has been working as a risk assessment officer for Security Solutions, a company based in Arcadia which works exclusively for the Arcadian Defence Department (the government department responsible for the defence of the country against external threats).

Beata was ill for a long period of time and unable to work. When she was well enough to return to work from sick leave she still became tired easily. Security Solutions told her that they were terminating her employment on the basis that she was not capable of full time employment due to illness. Security Solutions said to Beata that Arcadian law allowed them to terminate employees who had missed a significant period of work (defined by the Arcadian Courts to be a period of over 6 months) due to illness.

Arcadia has not implemented Directive 2000/78 properly with respect to discrimination with respect to disability. The Court of Justice has held that sickness such as that suffered by Beata should be accommodated if possible under the provisions of Directive 2000/78.

The Disabilities Coalition of Arcadia wants to support Beata in her claim that her dismissal conflicted with EU law. Using the course materials identify the issues raised by these facts and suggest what arguments Beata and the Coalition can make under EU law to protect Beata's rights.

Question 2:

In a speech in 2013, Lord Mance, a Justice of the UK Supreme Court said:

"Legal certainty is important... for all those affected by EU law... the general willingness of all Member States and their institutions to engage unreservedly in the development and implementation of EU law depends upon confidence that the outcome will be predictable: above all, that it will respect the EU legislators' apparent intentions. It is not the Court of Justice's role to act as a legislator.... The Court of Justice has with good reason itself stressed the virtues of legal effectiveness and certainty. The Court of Justice commonly sits as a court of first and last resort and the effects of its decisions are difficult to reverse or change. When changes involve Treaty interpretation, they even require Treaty amendment to achieve.... There have however been cases where certainty and predictability can be said not to have been achieved. A well-known example is the Court's decision in *Mangold v Rüdiger Helm* CaseC-144/04."

Using the course materials please write a critical assessment of this statement.