

SECTION 3- STATE OF PLAY OF PROTECTION AT NATIONAL LEVEL REGARDING EQUALITY AND NON-DISCRIMINATION

Austria

Article 7(1) of the Constitution of Austria states that “no one shall be discriminated against because of his disability” and that the Republic (Federation, Länder and municipalities) commits itself to ensuring the equal treatment of disabled and non-disabled persons in all spheres of every-day life.”¹

The legislation differs between the Federal level and the regions. At the federal level two legislations prohibit discrimination on the ground of disability: the **Disability Employment Act** and the **Disability Equality Act**. They go beyond or deviate from the rights defined by the Austrian Equal Treatment Act which does not include disability. These laws are applicable to private and federal employment, as well as all contracts and all legal relations governed by federal law, including school system, social insurance, etc. There is a lack of general definition of reasonable accommodation in line with the CRPD. If discrimination occurs, persons with disabilities may file a complaint at the *Sozialministeriumservice* (former: Federal Social Welfare Office). If a dispute cannot be settled within three months, an action can be filed in court. The conciliation procedure is mandatory prior to court action.

In practice, organisations of persons with disabilities reported that while there has been an effort to include persons with disabilities in society, policies and programmes are not allocated with sufficient financial and human resources. Moreover, not enough measures are adopted to ensure reasonable accommodation is provided in the public and private sectors.

Equality bodies in Austria have mostly a consultative function. The **Ombud for People with Disabilities** provides advice for people who feel discriminated against on grounds of disability. In special cases, it can bring class actions. Persons facing discrimination can also contact the **Ombud for Equal Treatment** who offers free and confidential advice and support, and is entitled to represent affected persons in the Equal Treatment Commission.

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Belgium

While enjoyment of rights and freedom without discrimination is enshrined in article 11 of the Belgian Constitution, it does not explicitly refer to any specific grounds². Discrimination on the ground of disability is prohibited at the federal level in the **Anti-Discrimination Act of 10 May 2007** and in the **Criminal Code**.³ The Anti-Discrimination Act covers all forms of discrimination, including multiple discrimination and ~~the~~ denial of reasonable accommodation. However, the concept of reasonable accommodation ~~is still~~ not well defined, understood and applied.

Organizations of persons with disabilities reported that current policies and programmes aimed at fighting discrimination on the ground of disability are insufficient. For instance, support measures in the area of employment are not effective and the employment rate of persons with disabilities ~~of~~ in Belgium remains one of the lowest in Europe.

¹ See English translation of the Austrian Constitution at: https://www.constituteproject.org/constitution/Austria_2009.pdf

² http://www.senate.be/doc/const_fr.html#t1

³ See articles 377bis, 405quater, 422quater, 438bis, 442ter, 444, 453bis, 514bis, 525bis, 532bis, 534quater of the Criminal Code.

Commenté [MO1]: Consider replacing by « remains » ???

Mis en forme : Anglais (États-Unis)

The **Interfederal Center for Equal Opportunities (UNIA)** is the inter-federal independent body promoting equal opportunities and rights and fighting against discrimination. In 2017, it received 516 claims of discrimination on the ground of disability, amounting to 23% of all claims received that year. Besides conducting studies and informing people about their rights, UNIA also has litigation powers. It can represent victims in justice, bring proceedings on its own name, intervene before the court and address non-binding decision or recommendation to parties of a dispute.

[The Belgian Disabled people organizations wish that the commitment made by the federal government to upgrade the competencies of UNIA in order to give it the status of National Independent Institute for Human Rights will become a fact before June 2019 \(end of the federal legislature\).](#)

Commenté [MO2]: Consider adding

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Bulgaria

The Constitution of Bulgaria does not explicitly prohibit discrimination on the ground of disability. The main legislations at this regard are the **Law on Protection against Discrimination** and the **Integration of Persons with Disabilities Act**. The Child Protection Act and the Social Assistance Act also expressly prohibit discrimination on the ground of disability. The **Law on Protection Against Discrimination** prohibits direct and indirect discrimination in the public and private sectors, including in the areas of education, health care, public transportation and provision of goods and services. The **Law on Integration of People with Disabilities** and its implementing regulations are based on the principles of prohibiting and preventing any form of discrimination based on disability. Both laws provide for certain forms of reasonable accommodation in the fields of education⁴ and employment.⁵ However, the concept of reasonable accommodation is not explicitly referred to and defined.

In practice, organisations of persons with disabilities reported discrimination against persons with disabilities, in particular against children with disabilities, because of the traditional medical mind-set that regards them as "ill", the lack of detailed legislation and mechanism to ensure inclusive education, full participation in policy making and prosecution of discrimination-related violations/crimes.

The **Commission for Protection against Discrimination** is an independent specialized body for prevention and protection against discrimination, ensuring equal opportunities and controlling the implementation and compliance of Bulgarian with international anti-discrimination norms. Between 2013 and 2017, the Commission opened proceedings in 454 cases on grounds of disability-related discrimination. Family members of persons with disabilities can also alert the Commission of abuses and be involved as plaintiffs on the merit of their relationship with the person with disabilities concerned. The **Ombudsman** of the Republic of Bulgaria has the power to deal with complaints concerning inequality through mediation, recommendations or by issuing positions.

Contacts of the Commission for Protection Against Discrimination

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Croatia

The principles of equality and non-discrimination is enshrined in article 14 of the Constitution of Croatia. However, disability is not listed explicitly listed in the discriminatory grounds. It is covered by the **Anti-**

⁴ See articles 7(10) and 32 of the Law on Protection Against Discrimination, and article 17 of the Law on Integration of People with Disabilities.

⁵ See article 16 of the Law on Protection Against Discrimination and article 24 of the Law on Integration of People with Disabilities.

Discrimination Act of 2008 that unified and summarised provisions on discrimination that were contained in prior laws. This Act covers all forms of discrimination, including the denial of reasonable accommodation.⁶ In addition, the **Law on Professional Rehabilitation and Employment of Persons with Disabilities** regulates reasonable accommodation in the workplace.

Despite this legislation, the UN Committee on the Rights of Persons with Disabilities has expressed concerns that exclusion and segregation in education, work and residential living is not regarded as a form of discrimination.⁷ Organisations of persons with disabilities explained that the majority of violations occurs due to denial of reasonable accommodation. They reported that the Anti-Discrimination Act is very rarely applied in practice and that lawsuits over discrimination on the ground of disability are extremely scarce. In addition, discrimination provisions are still present in law. For instance, for purposes of entitlement to social services and benefits, a distinction is made between different causes of impairments, such as war or accidents.

The central body competent for the elimination of discrimination is the **Ombudsman**. Special laws also provided for the creation of specific Ombudsmen, including an **Ombudswoman for Persons with Disabilities**. Her office acts as an equality body combating discrimination on the ground of disability and as an independent body for monitoring implementation of the CRPD. She has the power to intervene before the court and adopt non-binding decisions or recommendations.

Contacts of the Ombudswoman for Persons with Disabilities

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Cyprus

Article 28(2) of the Constitution of Cyprus refers to the enjoyment of rights and freedom without direct or indirect discrimination. However, disability is not explicitly mentioned in the list of discriminatory grounds. Non-discrimination is mentioned in the **Combating of Racism and Other Discrimination (Commissioner) Law (L. 42(I)/2004)** and the **Equal Treatment in Employment and Occupation Law (L. 58(I)/2004)**. In relation to disability, it is also referred in the **Persons with Disabilities Law 2000-2007** and the **Convention on the Rights of Persons with Disabilities and Related Issues (Ratification) Law** of 2011, that mainly focus on the areas of employment and provisions of goods, services and facilities.

The scope and effects of these laws are limited. In 2017, the CRPD Committee expressed concerns at the lack of definition of discrimination that recognizes that denial of reasonable accommodation is a form of disability-based discrimination in all areas of life, the absence of effective legislation and mechanisms addressing multiple and intersectional discrimination, and at the situations of persons with disabilities of ethnic minorities, and refugees and asylum seekers with disabilities.⁸

Organisations of persons with disabilities reported that besides the Persons with Disabilities Law, which was amended to include the concept of reasonable accommodation, no other steps have been taken by the State in order to include the concept of reasonable accommodation and recognize the denial of reasonable accommodation as a form of discrimination. They explained that, in practice, the public sector is asking compensation from persons with disabilities requesting reasonable accommodation.⁹

The **Commissioner for Administration and Protection of Human Rights (Ombudsman)** is the national body responsible of combating discrimination and promoting equality, including in relation to disability. The Ombudsman can formally decide on complaints, through the adoption of **legally binding** decisions or recommendations regarding claims of discrimination.

Contacts of the Commissioner for Administration and Protection of Human Rights

Postal address:

Website:

⁶ See article 4 of the Anti-Discrimination Act.

⁷ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Croatia (2015), paragraph 7.

⁸ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Croatia (2017), paragraphs 11, 13 and 15.

⁹ See Submission of the Pancyprian Alliance for Disability in response to the List of Issues of the Committee on the Rights of Persons with Disabilities in relation to the initial report of Cyprus (February 2017), pages 8-9.

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Czech Republic

The Constitution of Czech Republic refers to equal rights in its preamble, but does mention any specific groups or discriminatory grounds. The **Anti-Discrimination Act** of 2009 sets the general framework for protection against discrimination, which includes discrimination on the ground of disability.¹⁰ It prohibits all forms of discrimination, including harassment, sexual harassment, persecution, instruction to discriminate and incitement to discrimination. The duty to provide reasonable accommodation is limited to employment and related labour relations.

Organisations of persons with disabilities stressed that the narrow definition of reasonable accommodation and lack of obligation to provide for accommodation in all areas of life is an important issue. The UN Committee on the Rights of Persons with Disabilities also expressed concerns in relation to the duty to provide reasonable accommodation, as well as the absence of case law relating to judicial protection from disability-based discrimination.¹¹

The **Public Defender of Rights (Ombudsman)** is the national equality body in charge of the promotion of the right to equal treatment. It provides legal support and assistance to victims of discrimination. It can take non-binding decisions or recommendation on complains, be party to proceedings before courts, and challenges laws before the Constitutional Court and decisions of administrative bodies before administrative courts.

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Denmark

Prohibition of discrimination is not mentioned in the Danish Constitution. The Danish legislation contains a range of special provisions aimed at preventing discrimination of persons with disabilities in the labour market. The **Act on Prohibition of Discrimination in the Labour Market** prohibits direct and indirect discrimination on the ground of disability. It also imposes on employers a duty to make reasonable adjustments in relation to employment and training or education. Denmark has set up a **Board of Equal Treatment** to decide on matters such as complaints of discrimination based on disability in the labour market.

The UN Committee on the Rights of Persons with Disabilities and organisations of persons with disabilities expressed concerns that Denmark lacks comprehensive anti-discrimination legislation that would provide protection from discrimination on the basis of disability, in all areas of life, beyond the labour market. The Committee also noted that there is a lack of legal remedies for persons with disabilities whose rights under the Convention have been violated, and an absence of available information thereon.

Besides the Board of Equal Treatment, which focuses on discrimination in the field of employment, the **Danish Institute for Human Rights** is the independent State-funded institution with the mandate to promote and protect human rights and equal treatment. It can bring proceedings in its own name and file independent complaints or complaints on behalf of complainant before the National Board of Equal Treatment.

Contacts of the Danish Institute for Human Rights

¹⁰ See articles 2 and 3 of the Anti-Discrimination Act.

¹¹ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Czech Republic (2015), paragraphs 9 and 11.

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Estonia

Paragraph 12 of the Estonian Constitution guarantees the right to equality and non-discrimination. Disability is not explicitly mentioned as a discriminatory ground, although it may fall under “other grounds”. It is explicitly covered by the **Equal Treatment Act** which prohibits direct discrimination, indirect discrimination, harassment, instructions to discriminate and victimization.¹² The scope of application varies depending on the discriminatory ground. Regarding discrimination on the ground of disability, it is **restricted to employment, vocational guidance and training and membership in professional organisations**.¹³ The Act requires employers to grant preferences to persons with disabilities and take appropriate measures to enable persons with disabilities to have access and participate in employment.¹⁴

In 2015, the government reported that the Ministry of Social Affairs was preparing changes in the legislation to expand the prohibition on discrimination due to disability to other areas, such as education and access to goods and services.¹⁵ While the Act was amended in 2017, the scope of application has not been expanded.

The implementation of the Equal Treatment Act is monitored by the **Gender Equality and Equal Treatment Commissioner**, who is an independent and impartial expert. The Commissioner carries out surveillance in both the public and private sectors. It can assist and advise people who face discrimination but cannot represent clients in court. It can bring proceedings in its own name and take non-binding decisions or recommendations addressed to parties to a dispute.

Contacts of the Gender Equality and Equal Treatment Commissioner

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Finland

Section 6 of the **Constitution of Finland** explicitly prohibits discrimination on the ground of disability. A revised **Non-Discrimination Act** entered into force in 2015. It covers disability and applies to all public and private activities, excluding private life, family life and practice of religion.¹⁶ The obligation to promote equality applies to both public authorities and education providers, educational institutes and employers. According to the Act, the denial of reasonable accommodations is a discriminatory practice.¹⁷ Public authorities, education providers and employers must make reasonable accommodations to ensure that persons with disabilities have equal access to goods and services, work or education and training.

The **Non-Discrimination Ombudsman** has a mandate to supervise compliance with the Act with regard to all grounds of discrimination. It provides assistance to victims of discrimination in pursuing their claims and can give general recommendations to prevent discrimination and to promote equality. There is also a **Non-Discrimination and Equality Tribunal** in charge of reconciliation between the parties in matters concerning discrimination or victimisation.

Contacts of the Non-Discrimination Ombudsman

¹² See Equal Treatment Act, paragraph 3. English translation available here: <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/503052017002/consolidated>

¹³ Equal Treatment Act, paragraph 2.

¹⁴ Equal Treatment Act, paragraph 11.

¹⁵ UN Committee on the Rights of Persons with Disabilities, Initial report submitted by Estonia under article 35 of the Convention, due in 2014, paragraph 37.

¹⁶ See Non-Discrimination Act, Section 2. English translation available here: <https://www.finlex.fi/en/laki/kaannokset/2014/en20141325.pdf>

¹⁷ Non-Discrimination Act, Sections 8(2) and 15.

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France

Although the principle of equality appears in the preamble of the French Constitution, it does not explicitly prohibit discrimination. Discrimination on the ground of disability is prohibited in several legislations. Discrimination on the ground of disability was also included in the **Law on adaptation of Community law in the field of the fight against discrimination** of 27 May 2008. The **Criminal Code** enshrined a general prohibition of discrimination in relation to work and employment, and access to goods and services,¹⁸ that applies both to the public and private sectors, including individuals and companies. The **Labour Code** covers specifically discrimination in the field of employment and recognizes the denial of reasonable accommodation as a form of discrimination.¹⁹ However, organizations of persons with disabilities reported a lack of awareness about discrimination and anti-discrimination provisions.

The **Defender of Rights**, as a Constitutional independent authority, is competent in the field of non-discrimination and promotion of equality. It has a power of inquiry and intervention in disputes and can intervene before courts. In 2017, 21,8% of the discrimination claims it received were on the ground of disability.

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Germany

Article 3(3) of the Basic Law states that “No person shall be disfavoured because of disability.” At the federal level, discrimination on the ground of disability is prohibited by the **Equality for Persons with Disabilities Act** (*Behindertengleichstellungsgesetz*, said “BGG”) adopted in 2002 and revised in 2016, and the **General Equal Treatment Act** (*Allgemeines Gleichbehandlungsgesetz*, said “AGG”) adopted in 2006. All 16 “Länder” (*Regions*) in Germany have adopted **Regional Equality Acts** for the benefit of persons with disabilities. They are usually based on the BGG, but contain specific norms supplementing the BGG at regional level. The AGG regulates equal opportunities in employment and civil law. Its scope of protection is weaker than the BGG, as discrimination under civil law is prohibited only when it arises in a large number of cases.²⁰

Since 2016, the BGG prohibits all forms of discrimination, including the denial of reasonable accommodation and multiple discrimination. On the other hand, the AGG does not mention reasonable accommodation. Other laws also do not, or not sufficiently, consider the notion of reasonable accommodation.

The revised BGG law offers new, free of costs, arbitration procedures. These arbitration procedures are legally binding and must be exhausted before legal actions against a federal body can be started claiming a violation of the rights contained in the BGG. Both individuals and organisations of persons with disabilities can start an arbitration.

The independent anti-discrimination body is the **Federal Anti-Discrimination Agency** (*Antidiskriminierungsstelle des Bundes*, said “ADS”). This body mainly conducts studies, delivers reports, and informs and raises awareness

¹⁸ See article 225 of the French Criminal Code.

¹⁹ See Law on Equal Rights and Opportunities, Participation and Citizenship of Persons with Disabilities, article 24; and article L. 5213-6 of the Labour Code.

²⁰ See Section 19(1), available in English here:

http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/AGG/agg_in_englischer_Sprache.pdf;jsessionid=6BF92ED0E8BCDE7EA2709D4E5BC06AB7_2_cid350?__blob=publicationFile&v=5

about discrimination. It is not allowed to support or accompany individuals during their legal proceedings. Moreover, although it is said to be autonomous, it was reported to be subject to the authority of the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth.

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Greece

The Greek Constitution enshrines equality before the law but does not mention explicitly prohibition of discrimination on the ground of disability. The **Law 4443/2016** prohibits discrimination on the ground of disability, but the scope is limited to the field of employment and labour in line with Directive 2000/78 / EC. It includes the recognition of denial of reasonable accommodation as a form of discrimination. The same law provides that the prohibition of discrimination on the ground of disability may be extended through a presidential decree to the fields of social protection (including social security and health care), social benefits and tax benefits, education and access to the commercial distribution and supply of goods and services to the public, including housing. On a request of the National Council of Persons with Disabilities, this provision was incorporated as an obligation in the **Law 4488/2017**. The Presidential Decree should be adopted by September 2018.

Organisations of persons with disabilities reported that due to the austerity measures, the funding for the implementation of policies and programs which could contribute to the achievement of de facto equality is not sufficient. The gap between the de jure and the de facto equality is large. For example, in the field of education of persons with disabilities, the Greek Ombudsman noted in 2015 that the inadequate implementation of special measures, such as individual support measures, which are foreseen in the Greek legislation, leads to de facto discrimination against children with disabilities.²¹

The **Greek Ombudsman** is responsible for the monitoring and promotion of the implementation of the equal treatment principle in the public and private sector. Among others, it conducts awareness-raising campaigns, and handles and investigates complaints submitted in relation to violations of the rights of persons with disabilities. When it receives discrimination claims, it can contribute to the settlement of dispute, carry out independent research and suggest sanctions for the employers to the Greek Labour Inspectorate. 33% of the complaints he received in 2016 were about discrimination on the ground of disability. The majority of complaints submitted by persons with disabilities concerned the implementation of reasonable accommodation.

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Hungary

Article 15 of Hungary's Fundamental Law ensure fundamental rights to every person without discrimination, including on the ground of disability. **Act CXXV of 2003 on equal treatment and the promotion of equal opportunities** also enshrines prohibition of discrimination on the ground of disability, in particular direct and indirect discrimination, harassment, illegal segregation and retaliation. The prohibition applies only in legal relations referred to in the law, which does not ensure full compliance with the requirement of "all areas of life." Moreover, it does not recognize the denial of reasonable accommodation as a form of discrimination nor

²¹ See Greek Ombudsman, Combating Discrimination, Special Report 2015, page 9. Available in English here: <https://www.synigoros.gr/resources/docs/promoting-equal-treatment-special-report-2015--2.pdf>.

contains an explicit provision on reasonable accommodation. However, reasonable accommodation was introduced in 2015 in the basic principle in the new **National Disability Program** and is enshrined in the **Act I of 2012 on the Labour Code**,²² **Act CXIX of 2011 on public servants** and **Act XCII of 2007 on the promulgation of the CRPD and its Optional Protocol**.

Organisations of persons with disabilities expressed concern over the fact that denial of reasonable accommodation and discrimination by association with persons with disabilities, perceived disabilities, past and future disabilities and multiple and intersectional discrimination are not explicitly mentioned in any legislative acts. They stress that although reasonable accommodation is mentioned in the Labour Code it is currently an empty notion that cannot be enforced in practice because stakeholders, employers, and authorities interpret it differently or ignore it.

Two main equality bodies operate in Hungary. The **Equal Treatment Authority** is responsible for raising awareness about discrimination, investigating discrimination complaints and enforcing the principle of equality. It can initiate court proceedings. In addition, the **Commissioner for Fundamental Rights** acts as the Hungarian Ombudsman covering the all spectrum of fundamental rights. It can proceed upon complaints or at its own initiative in the case of human rights infringements. It can adopt non-binding decision or recommendation in relation to discrimination, and more importantly can initiate the review of legislation at the Constitutional Court.

Contacts of the Equal Treatment Authority

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Contacts of the Commissioner for Fundamental Rights

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Ireland

There is no general provision in the Constitution of Ireland that prohibits discrimination on the ground of disability.²³ Discrimination on the ground of disability is prohibited under the **Equal Status Act 2000**²⁴ and the **Employment Equality Act**.²⁵ The Equal Status Act applies mainly in the areas of access to good and services, as well as education. It covers direct and indirect discrimination, discrimination by association (part 1 section 3), harassment (part 2, section 11), incitement to discrimination (section 13) as well as the denial to provide reasonable accommodation from the “provider of a service.” (part 1 section 4). The Employment Equality Act covers the field of employment which prohibits direct and indirect discrimination, discrimination by association and harassment. The concept of reasonable accommodation was incorporated under the duty of the employer to provide “appropriate measures” (section 16) but it seems that its denial is yet not recognised as a form of discrimination on the ground of disability. **Ireland lacks prohibitions of discrimination in other areas such as social protection and healthcare.** The **Human Rights and Equality Commission** is the independent national human rights and equality institution of Ireland. It promotes equality and non-discrimination, reviews the effectiveness of human rights and equality law, policy and practice and can provide practical help, including legal assistance to help people defend their rights, and contributing to legal cases. **Contacts of the Human Rights and Equality Commission**

Postal address:	Website:
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²² See Act I of 2012 on the Labour Code, section 51(5).

²³ Text available here: https://www.taoiseach.gov.ie/eng/Historical_Information/The_Constitution/February_2015_-_Constitution_of_Ireland_.pdf.

²⁴ Text available here: http://www.lawreform.ie/_fileupload/Restatement/First%20Programme%20of%20Restatement/EN_ACT_2000_0008.PDF.

²⁵ Text available here: http://www.lawreform.ie/_fileupload/RevisedActs/WithAnnotations/EN_ACT_1998_0021.PDF

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Italy

Article 3 of the Constitution of Italy enshrines the principle of equality before the law but does not include disability among the grounds of discrimination. The **Law 67/06 on “Measures for the judicial safeguarding of persons with disabilities victims of discrimination”** is the legal instrument that establishes a legal framework in favour of persons with disabilities, victims of direct or indirect discrimination, in all areas of life. This law does not include a definition of reasonable accommodation and does not explicitly recognize the denial of reasonable accommodation, discrimination by association, multiple and intersectional discrimination as forms of discrimination based on disability. Moreover, its scope does not provide for the prevention of discrimination.

In 2016, the UN Committee on the rights of persons with disabilities, supported by national organisations of persons with disabilities expressed concerns over the lack of recognition and definition of reasonable accommodation and the absence of legislation and mechanisms with a mandate that addresses multiple discrimination, including effective sanctions and remedies.²⁶ In 2013, the Court of Justice of the European Union had already judged that by not introducing in its legislation requirements for employers to ensure reasonable accommodation of employees with disabilities, Italy had failed to its obligations under EU law (Council Directive 2000/78/EC) and the UN CRPD.²⁷

There is no strong independent equality body that promotes equality and prevent and investigate discrimination on the ground of disability. There exists a **National Equality Councillor** that works together with the Ministry for Labour and Social Affairs, but **only focusing on issues of employment**.

Contacts of the National Equality Councillor

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Latvia

The Latvian Constitution ensures equality before the law and realization of human rights without discrimination, but does not mention any discriminatory ground. Equal rights and prohibition of discrimination appears in the **Labour Law**, the **Law on Social Security**, the **Law on the Rights of Patients** and the **Consumer Rights Protection Law**. There is no harmonized anti-discrimination framework. The concept of reasonable accommodation and recognition of denial of reasonable accommodation as a form of discrimination have not been integrated in the legal framework.

In 2017, the UN Committee on the Rights of Persons with Disabilities expressed concerns regarding the narrow scope and purpose of the Disability Law, the lack of an explicit prohibition of discrimination on the basis of all types of disability, and the non-recognition of the denial of reasonable accommodation as disability-based discrimination.²⁸ Organisations of persons with disabilities reported that disability discrimination cases are extremely rarely brought to court. There is a lack of awareness regarding what constitutes discrimination, how to seek support and fill a complain. There is also a fear of victimisation that contributes to under-use of the legislation in litigation.²⁹ They also noted that very little work on prevention of discrimination or recognition of discrimination is conducted among professionals, employers and the general public.³⁰

²⁶ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Italy (2016), paragraphs 9 and 11.

²⁷ CJEU, Judgment in Case C-312/11, *Commission v Italy* (2013). See press release here: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2013-07/cp130082en.pdf>.

²⁸ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Latvia (2017), paragraph 8.

²⁹ See Response to the Lists of Issues submitted for the review of Latvia by the CRPD Committee, by The Latvian Umbrella Body of Disability Organisations SUSTENTO (June 2017), page 2.

³⁰ *Ibid*, page 3.

The **Office of the Ombudsman** is the independent body in charge of ensuring the protection of human rights in Latvia. It can represent victims of discrimination in front of courts, bring proceedings in its own name and take non-binding decision or recommendations addressed to parties of a dispute. However, it was reported that although it is fairly accessible and complaints can be submitted online or by post, only people based in the capital can realistically make an appointment with the office to explain in person their case further or provide evidence due to costs and lack of accessible transport for instance.

Contacts of the Office of the Ombudsman

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Lithuania

Article 29 of the Constitution of Lithuania enshrined the right to equality and non-discrimination but does not mention disability as a ground of discrimination. The **Law on Equal Treatment** establishes the anti-discrimination legal framework and prohibits direct and indirect discrimination, harassment and instruction to discriminate. However, it does not explicitly recognise the denial of reasonable accommodation as a form of discrimination on the ground of disability. The Law on Equal Treatment only indicates that in implementing equal treatment an employer has a duty to take measures to enable persons with disabilities to find an employment, work, plan a career, and have access to training, including providing reasonable accommodation if it does not create disproportional burden.³¹ It applies to all legal acts, including labour, education and the access to goods and services.³²

The issue relating to reasonable accommodation was raised by organisations of persons with disabilities³³ and the UN CRPD Committee. The Committee expressly said that it was deeply concerned that the State party does not consistently apply the concept of reasonable accommodation in relation to the principle of non-discrimination.³⁴

The **Office of the Equal Opportunities Ombudsperson** is in charge of ensuring the prevention of discrimination and implementation of equal opportunities in Lithuania. It is a quasi-judicial body that can adopt **legally binding decisions**.

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Luxembourg

The Constitution of Luxembourg refers to equality but does not explicitly mentions discrimination or any discriminatory grounds.³⁵ Anti-discrimination legislation was introduced through the adoption of the **Acts of 28 and 29 November 2006 on equal treatment**. It applies to all persons whether public or private, natural or legal, including the government agencies responsible for employment, social protection (including social security and health care) social benefits, education and access to goods and services (including housing). It prohibits direct and indirect discrimination, incitement to discrimination and harassment. There is no explicit and general

³¹ Lithuanian Forum for the Disabled, Proposal for the List of issues in relation to the initial report of the Republic of Lithuania, paragraph 7.

³² Note that there is a list of exceptions, often related to religion, provided in article 4. English translation available here: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.389500?ifwid=-oo3xf4tu>

³³ *Ibid.*

³⁴ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Lithuania (2016), paragraph 16.

³⁵ Besides gender equality under article 11. See article 10 bis of the Constitution of Luxembourg. English version available here: https://www.constituteproject.org/constitution/Luxembourg_2009.pdf?lang=en.

recognition of the concept of reasonable accommodation and, except in the field of education, its denial is not recognized as a form of discrimination on the ground of disability.³⁶

Organisations of persons with disabilities reported that the Act is not applied strictly enough in practice. For instances, they noted that in employment matters for example, discrimination is common and legal quotas are widely disregarded. Persons with disabilities are often either not aware about their rights and the anti-discrimination legal framework, or afraid to claim their rights.³⁷

The **Centre for Equal Treatment** is the national body that specializes in combating discrimination. Its task is to promote, analyse and monitor the equal treatment of all persons without discrimination, including on the grounds of disability. It has the mandate to assist persons who consider themselves to be the victims of discrimination by providing them with advice and guidance. However, the UN Committee on the Rights of Persons with Disabilities emphasized that the Center lacks the requisite legal jurisdiction to deal with complaints relating to discrimination, particularly multiple discrimination or discrimination in the private sector, or the power to remedy complaints.³⁸ It also expressed concerns regarding the insufficient resources to carry out its mandates and noted that the absence of cases of discrimination on grounds of disability could be partly explained by the lack of awareness by persons with disabilities of existing mechanisms to defend their rights.³⁹

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Malta

While the Maltese Constitution prohibits discrimination, disability is not included in the discriminatory grounds enshrined in the Constitution.⁴⁰ The **Equal Opportunities (Persons with Disability) Act** of 2000 sets the anti-discrimination legal framework for persons with disabilities.⁴¹ It was amended in 2016 to strengthen the right of equality of persons with disabilities.⁴² It includes direct and indirect discrimination, multiple and intersectional forms of discrimination, as well as harassment. Denial of reasonable accommodation is recognized as a form of discrimination on the ground of disability only in relation to employment.⁴³ The **Labour Code** prohibits discrimination on the ground of⁴⁴ disability and require employers to take “appropriate measures” to ensure employment of persons with disabilities.⁴⁵

The **Commission on the Rights of Persons with Disabilities**, established under the Equal Opportunities Act, has the mandate to investigate complaints it receives about breach of rights arising from discrimination, and promote, protect and monitor the implementation of the CRPD. It can represent victims of discrimination on the ground of disability in court as well as bring proceedings in its own name.

Unfortunately, contact with organisations of persons with disabilities show that some are little aware, if at all, of this legal framework, including the existence of the Commission for the Rights of Persons with Disabilities. Moreover, discrimination still take place in practice. For instance, it was reported that although education authorities, bodies or institutions are prohibited to discriminate on the ground of disability, the directives issued

³⁶ It is only defined in the field of employment and education. See, in particular, the UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Luxembourg (2017), paragraph 10.

³⁷ Némme Mat Eis and other Luxembourg DPOs, Alternative Report on Implementation of the United Nations Convention on the Rights of Persons with Disabilities, Luxembourg 2016, page 13.

³⁸ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Luxembourg (2017), paragraph 12.

³⁹ *Ibid.*

⁴⁰ See article 45(3) of the Constitution of Malta. English version available here: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566>.

⁴¹ English version available here: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8879&l=1>.

⁴² Commission for the Rights of Persons with Disability of Malta, Submission to the Committee on the Rights of Persons with Disabilities in advance of its consideration of Malta's 1st periodic report (February 2018), page 7.

⁴³ See Equal Opportunities (Persons with Disability) Act, Part IV, article 7(2)(d).

⁴⁴ Labour Code of Luxembourg, Article L. 251-1 (1).

⁴⁵ *Ibid.*, Article L. 562-1 (5).

by the Malta Union of Teachers create many barriers which results in discrimination against many students with disabilities.⁴⁶

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Netherlands

Article 1 of the Dutch Constitution prohibits discrimination but disability is not explicitly mentioned in the discriminatory grounds. In its report submitted to the CRPD Committee the Dutch government noted that a bill to include disability had been submitted to the Parliament.⁴⁷ The **Act on Equal Treatment on the Grounds of Disability or Chronic Illness** prohibits direct and indirect discrimination, as well as harassment and the denial of reasonable accommodation⁴⁸ "on the grounds of disability or chronic illness." However, the Act provides **exceptions** not in line with article 5 of the CRPD that limit the scope of protection against discrimination.⁴⁹ Incitation to, or participation in, acts of hatred or discrimination based on disability are explicitly prohibited by the **Dutch Criminal Code**.⁵⁰ The Criminal Code also recognizes as a criminal offence "certain acts which can have the purpose or effect in regard of persons with a physical, psychological or mental disability of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the field of politics or economics, in social or cultural matters or any other area of social life" when perpetrated by "any person who, in the discharge of his office, practice of a profession or in conducting a business."⁵¹

The **Institute for Human Rights** is the national body in charge of investigating complaints of discrimination and increases the awareness of human rights in the Netherlands. It can adopt non-binding opinions and recommendations and bring proceedings in its own name in court. In 2017, 30% of the opinions issued by the Institute addressed disability or chronic illness, and most questions and 49% of the opinions related to providing and delivering goods and services, including education. In parallel to the Institute for Human Rights, the **Municipal Anti-Discrimination Facilities Act** requires municipalities to ensure that all residents confronted by discrimination can contact an **independent local anti-discrimination bureau** for assistance. The anti-discrimination bureaus have the obligation to provide assistance when discrimination is reported and to register complaints about discrimination.

In practice, discrimination still takes place and the list of exceptions provided in section 3 of the Act on Equal Treatment on the Grounds of Disability or Chronic Illness limits the scope of protection against discrimination. Such exceptions allow discrimination to "protect health and safety" and when it is "for the benefit of persons with disabilities." It endorses discriminatory practices, such as forced treatment and placement of persons with psychosocial disabilities, highly criticized by organisations of persons with disabilities in the country.

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⁴⁶ Commission for the Rights of Persons with Disability of Malta, Submission to the Committee on the Rights of Persons with Disabilities in advance of its consideration of Malta's 1st periodic report (February 2018), page 8.

⁴⁷ Initial report on the implementation by the Netherlands of the UN Convention on the Rights of Persons with Disabilities (12 June 2018), page 16.

⁴⁸ See section 2 of the Act on Equal Treatment on the Grounds of Disability or Chronic Illness. English text available here: http://www.equalrightstrust.org/ertdocumentbank/Microsoft%20Word%20-%20EQUAL_TREATMENT.pdf.

⁴⁹ See section 3 of the Act on Equal Treatment on the Grounds of Disability or Chronic Illness which provides a list of exceptions to the prohibition on discrimination.

⁵⁰ See articles 137d and 137f of the Dutch Criminal Code.

⁵¹ See article 429quater of the Dutch Criminal Code and Initial report on the implementation by the Netherlands of the UN Convention on the Rights of Persons with Disabilities (12 June 2018), page 16.

Poland

The Constitution of Poland prohibits discrimination in political, social or economic life and enshrined the principle of equality before the law and right to equal treatment by public authorities. However, it does not mention any discriminatory grounds.⁵² Article 69 mentions that “public authorities shall provide, in accordance with statute, aid to disabled persons to ensure their subsistence, adaptation to work and social communication.” Discrimination on the ground of disability is **prohibited solely in the field of employment** by the **Act of 3rd December 2010 on the implementation of some regulations of European Union regarding equal treatment (ct on Equal Treatment)**,⁵³ contrary to other grounds which benefit from a wider scope of protection against discrimination.⁵⁴ This Act covers direct and indirect discrimination as well as harassment. Reasonable accommodation is enshrined in the **Act of 27th August 1997 on occupational and social rehabilitation and employment of persons with disabilities** and its denial in the field of employment is recognized as a form of discrimination on the ground of disability.

Organisations of persons with disabilities reported that despite numerous opinions presented to Ministry of Family, Work and Social Policy and the Government Plenipotentiary for Equal Treatment, no legislative steps were taken with remedy to the lack of a strong anti-discrimination legal framework in compliance with the CRPD.⁵⁵ For instance, there is no intersectional approach to disability or recognition of multiple discrimination. Discrimination against women and girls with disabilities⁵⁶ and against persons with psychosocial with disabilities⁵⁷ were particularly reported to the CRPD Committee. The Human Rights Defender also noted a low awareness and knowledge about the rights of persons with disabilities and bodies mandated to provide assistance to people facing discrimination.⁵⁸

The **Commissioner for Human Rights** is the independent authority with the mandate to ensure the protection of liberties and human and citizen's rights, as well as the implementation of the principle of equal treatment, as set forth in the Constitution and other normative acts. The basic tasks of the Commissioner include examining motions addressed to him, including complaints about the infringement of the principle of equal treatment and undertaking appropriate activities. It can also represent claimants in front of courts, bring proceedings in its own name and intervene before courts, including the Constitutional Tribunal.

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Portugal

Article 13 of the Portuguese Constitution⁵⁹ enshrines the principles of equality and non-discrimination. However, disability is not included in the list of discriminatory grounds. **Law No. 46/2006 of August 28⁶⁰** is the legal act that prohibits discrimination on the basis of disability. It applies to both the public and private sectors and to all areas (employment, education, healthcare, provision of good and services etc.).⁶¹ Formally it prohibits direct and indirect discrimination on the ground of disability, in all its forms. Yet, the law does not explicitly recognize the concept of reasonable and its denial as a form of discrimination. It only mentions, in relation to employment and

⁵² See article 32 of the Constitution of Poland. English text available here: <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

⁵³ English text available here: <https://www.rpo.gov.pl/en/content/act-3rd-december-2010-implementation-some-regulations-european-union-regarding-equal>.

⁵⁴ Polish Association Institute for Independent Living, Answers to the UN Committee on the Rights of Persons with Disabilities List of Issues within the Evaluation of the Polish Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities, pages 11-12.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*, page 13.

⁵⁷ Human Rights Defender, Realisation of the obligations arising from the Convention on the Rights of Persons with Disabilities by Poland, page 5.

⁵⁸ *Ibid.*

⁵⁹ English text available here: <https://dre.pt/constitution-of-the-portuguese-republic>.

⁶⁰ Text in Portuguese here: http://www.inr.pt/bibliopac/diplomas/lei_46_2006.htm.

⁶¹ See article 4 of Law No. 46/2006 of August 28.

work (article 5), that “adequate measures” should be used, “depending on the needs of a particular situation, so that the disabled person has access to, or is able to progress, or to receive training, unless such measures entail disproportionate burdens on the employer.” Moreover, discrimination by association and multiple forms of discrimination on the grounds of age, sex and ethnic origin are not formally recognized.

Organisations of persons with disabilities reported that in practice discrimination on the ground of disability is still taking place. **While disability discrimination in Europe is in average 15%, in Portugal the figure reaches 65%, with no national strategy for inclusion of persons with disabilities adopted by the government.**⁶² Organisations emphasized the fact that there is a widespread lack of knowledge among persons with disabilities and their organisations about their rights.⁶³

Moreover, the CRPD Committee expressed concerns about “the ineffectiveness of the legal remedies available to persons with disabilities within the framework of the powers conferred on the **National Institute for Rehabilitation** for the review of cases of non-compliance with disability policies, and about the Institute’s mediation of complaints filed by persons with disabilities for such non-compliance, which are often left unresolved, closed and/or result in no penalty whatsoever.”⁶⁴ While there exists a **Commission for Equality in Labour and Employment**, a High Commission for Migration and a Commission for Citizenship and Gender Equality, there is **no effective independent body that effectively assist people with their claims of discrimination on the ground of disability in all areas of life.**

Romania

The Constitution of Romania refers to the principle of discrimination in several articles.⁶⁵ However, it never explicitly refers to disability as a discriminatory ground.

The **Governmental Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination** sets the anti-discrimination legal framework that applies to both the public and private sectors in the areas of employment, social protection, public and other services, access to goods and facilities education, freedom of movement and, other fields of life.⁶⁶ The Ordinance explicitly prohibits discrimination on a number of grounds, including disability.⁶⁷ However, it does not provide a definition of the meaning of discrimination on the ground of disability, as well as of any other grounds.⁶⁸ Even **Law no. 448/2006 of 6 December 2008 regarding the Protection and Promotion of the Rights of Disabled Persons**⁶⁹ that refers to “the prevention and fight against discrimination” does not define discrimination on the ground of disability.⁷⁰

The Ordinance, prohibits direct, indirect and multiple forms of discrimination, as well as harassment. Yet, the recognition of discrimination by association and denial of reasonable accommodation as forms of discrimination on the ground of disability are still lacking. The concept of reasonable accommodation is mentioned solely in relation to the workplace.⁷¹ Law 448/2006 provides for the duty to provide “adequate technical support” in education, for access to public buildings and for access to transportation services, but its denial is not considered as discriminatory.

The **National Council for Combating Discrimination** is the autonomous State authority, which performs activities in the field of discrimination. It is a tribunal-type body, under the control of the Parliament, that can intervene

⁶² See on the website of the European Disability Forum: <http://www.edf-feph.org/newsroom/news/portugal-needs-national-disability-strategy-conclusions-high-level-visit-portugal>.

⁶³ Disability and Human Rights Observatory, Submission to the Committee on the Rights of Persons with Disabilities of the Responses to the List of Issues (January 2016), paragraph 5.6.

⁶⁴ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Portugal (2016), paragraph 15.

⁶⁵ See in particular, articles 4, 6, 16, 30, 44 and 53 of the Romanian Constitution. English (unofficial) translation available here: <https://www.ccr.ro/en/constitutia-romaniei-2003>.

⁶⁶ Governmental Ordinance 137/2000, article 3.

⁶⁷ Governmental Ordinance 137/2000, article 2(1).

⁶⁸ See: European network of legal experts in gender equality and non-discrimination, Country report Non Discrimination, Romania 2017, page 41.

⁶⁹ English text available here: <http://www.equalrightstrust.org/ertdocumentbank/LEGE%20448%20engleza.pdf>.

⁷⁰ Article 3 of Law no. 448/2006.

⁷¹ See articles 5 and 83 and of Law no. 448/2006: “reasonable adaptation to the workplace.”

before courts but also formally take **legally binding** decisions on complains. In 2017, out of 652 petitions received, 74 were on the ground of disability.⁷²

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Slovakia

Article 12(2) of the Constitution of the Slovak Republic⁷³ ensures that fundamental rights and freedom are guaranteed to all without discrimination. However, disability is not included in the list of discriminatory grounds. The **2004 Anti-Discrimination Act** sets the anti-discrimination legal framework. It establishes a generally applicable principle of equal treatment based on the prohibition of discrimination, including based on disability. However, while the Act covers the fields of employment and equivalent legal relations, social security, education, health care and provision of goods and services, **disability-based discrimination legislation has not been extended beyond the employment sector**. Moreover, although it defines direct discrimination, indirect discrimination, harassment, instruction and incitement to discriminate, and victimization, it **does not recognize multiple and intersectional discrimination, as well as the denial of reasonable accommodation as forms of discrimination on the ground of disability**.

In March 2018, CRPD Committee noted that Slovakia misinterpreted reasonable accommodation as a temporary special measure and that there is a lack of an explicit definition of reasonable accommodation in the legislation. In relation to multiple and intersectional forms of discrimination, it expressed its concerns regarding the lack of recognition, especially in relation to women and girls with disabilities and members of ethnic minorities with disabilities, especially Roma people. Finally, it also expressed concerns about the lack of awareness of the public and private sectors about multiple discrimination and the obligation to provide reasonable accommodation.⁷⁴

The **National Centre for Human Rights** is an independent body that unites the mandate of National Human Rights Institution and Equality Body. It can represent victims of discrimination in front of courts, intervene before the court, bring proceedings in its own name, and adopt not legally binding decisions or recommendations.

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Slovenia

Article 63 of the **Slovenian Constitution** states that incitement to discrimination is unconstitutional⁷⁵ but does not explicitly refer to disability as a discriminatory ground. However, article 14 on equality before the law was amended in 2004 to add disability in the list of grounds.

The areas of equal opportunities and non-discrimination of persons with disabilities are governed by the **Principle of Equal Treatment Act (ZUNEO)**⁷⁶ and the **Equalization of Opportunities for Persons with Disabilities Act (ZIMI)**. The principles of equality and non-discrimination have been further integrated in acts and regulations in

⁷² European network of legal experts in gender equality and non-discrimination, National equality body publishes annual activity report for 2017 (May 2018). Available at: <https://www.equalitylaw.eu/downloads/4617-romania-national-equality-body-publishes-annual-activity-report-for-2017-pdf-103-kb>.

⁷³ English text available here: <https://www.prezident.sk/upload-files/46422.pdf>.

⁷⁴ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Slovakia (2018), paragraphs 13-20.

⁷⁵ English text available here: <http://www.us-rs.si/media/constitution.pdf>.

⁷⁶ English text available here: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/68656/89155/F265912074/SVN68656.pdf>.

the field of employment, healthcare, education and social protection.⁷⁷ The ZIMI Acts includes in particular: prohibition of discrimination by state authorities, state and local self-government bodies, bearers of public authority and public service providers; equal participation in proceedings; access to services and use and adaptation of buildings and facilities in public use; prohibition of writing and displaying discriminating messages and symbols; and access to inclusive education, health, manner of residence, information, culture and public transportation. However, Slovenia failed to recognize the denial of reasonable accommodation as a form of discrimination on the ground of disability.

In April 2018, CRPD Committee expressed concerns about the absence of public policies and measures focusing on and prioritizing equality and the protection of persons with disabilities against all forms of discrimination.⁷⁸ It also noted that in practice multiple and intersectional forms of discrimination against persons with disabilities, including Roma, Sinti and members of other ethnic groups are taking place and that there is lack of information about discrimination against lesbian, gay, bisexual, transgender or intersex persons with disabilities.⁷⁹

The **Advocate of the Principle of Equality** has the mandate to address cases of alleged discrimination and issues **legally binding** and none binding decisions or recommendations in relation to a dispute. It can also represent claimants in front of court, bring proceedings in its own name and intervene before the court. However, organisations of persons with disabilities reported that due to lack of resources, it is almost paralyzed in its role of assisting victims of discrimination.⁸⁰ The CRPD Committee had also noted with concerns more generally the lack of capacity, coordination and measurable impact of the focal points designated to combat discrimination, and the absence of effective affirmative action in this regard.⁸¹

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Spain

Article 14 of the Spanish Constitution proclaims the right to equality and non-discrimination, but does not explicitly refers to the ground of disability. However, under the Spanish Constitution⁸² the CRPD as international treaty is directly applicable in the national legal order. This mean that it should prevail over domestic laws.

Royal Legislative Decree 1/2013 of 29 November 2013 approving the revised general law on rights of persons with disabilities and their social inclusion guarantees the right to equal opportunities and treatment of persons with disabilities. It also provides an infringements and penalties regime relating to discrimination on the ground of disability.⁸³ The law includes direct and indirect discrimination, discrimination by association, harassment, non-compliance with accessibility requirement and positive action measures legally established, and the denial of reasonable accommodation.⁸⁴ It covers many areas such as access to good and services, employment and education. In practice, organisations of persons with disabilities reported that there are no specific programs to ensure reasonable accommodations and regrets a lack of political and economic commitment to disability policies, as well as the lack of awareness raising.

A **Disability Assistance Office** (“OADIS”) was created as permanent and specialized advisory body of the **National Council on Disability** responsible for promoting equal opportunities, non-discrimination and universal

⁷⁷ See in particular: Employment Relationships Act (ZDR-1), Vocational Rehabilitation and Employment of Persons with Disabilities Act (ZZRZI), Pension and Disability Insurance Act (ZPIZ-1), Health Care and Health Insurance Act (ZZVZZ), Kindergarten Act (ZVrt), Elementary School Act (ZOsn), Vocational Education Act (ZPSI-1),²⁹ and the Gymnasiums Act (ZGim), and Social Assistance Act (ZSV).

⁷⁸ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Slovenia (2018), paragraph 6.

⁷⁹ *Ibid.*

⁸⁰ Shadow report of the group of non-governmental organisations from Slovenia on implementation of CRPD in Slovenia (2008 – 2017), page 11.

⁸¹ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Slovenia (2018), paragraph 6.

⁸² Article 96(1) of the Spanish Constitution.

⁸³ Spanish text available here: <http://www.boe.es/boe/dias/2013/12/03/pdfs/BOE-A-2013-12632.pdf>.

⁸⁴ See in particular article 63 of the Royal Legislative Decree 1/2013.

accessibility. The Disability Assistance Office provides advisory services, studies and analysis of consultations, complaints or complaints presented by persons with disabilities. It is **not** an independent equality body.

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In parallel the **Ombudsman** acts as the High Commissioner of the Parliament responsible for defending the fundamental rights and civil liberties of citizens by monitoring the activity of the Administration and public authorities. He can receive complaints relating to alleged violations, publish annual reports for the Parliament and send recommendations to public institutions. One part of the 2017 report addressed students with disabilities.⁸⁵

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Sweden

Article 2 of the Constitution of Sweden prohibits discrimination on a list of different grounds, in which “functional disability” is referred.⁸⁶ In addition, the **Swedish Discrimination Act (2008:567)** was adopted to promote equal treatment and combat discrimination, including on the ground of disability.⁸⁷ The Act covers, among others, the areas of work and employment, education, access to goods, services and housing (outside the private and family sphere), health and medical care. It includes direct and indirect discrimination, harassment and instruction to discriminate. In relation to disability, it also introduced the notion of “**inadequate accessibility**.”⁸⁸ Under this notion, the law prohibits certain omissions to provide accessibility to persons with disabilities. The prohibited omissions include both failure to provide accessibility for groups of people with disabilities, as well as some aspects of reasonable accommodation, primarily in employment and education. The concept of reasonable accommodation has not been per se defined and included in the Discrimination Act. Moreover, multiple and intersectional forms of discrimination are not included.

The **Equality Ombudsman** was established to supervise compliance with the Discrimination Act. It promotes equal rights and opportunities and can receive and consider individual complaints. It may bring legal action for damages on behalf of claimants of alleged discrimination. Yet, organisations of persons with disabilities reported that in practice very few cases that are reported to the Ombudsman are considered or brought to court. This has been highly criticized by Swedish society.

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⁸⁵ Read more on the website of the Spanish Ombudsman: <https://www.defensordelpueblo.es/en/news/spanish-ombudsman-made-2175-recommendations-suggestions-2017/>.

⁸⁶ See article 2 of the Constitution of Sweden. English text available here:

<http://www.parliament.am/library/sahmanadrutyunner/Sweden.pdf>.

⁸⁷ Text in English available here: https://www.government.se/4a788f/contentassets/6732121a2cb54ee3b21da9c628b6bdc7/oversattning-diskrimineringslagen_eng.pdf.

⁸⁸ See section 4(3) of the Discrimination Act (2008:567): “Inadequate accessibility: that a person with disability is disadvantaged through a failure to take measures for accessibility to enable the person to come into a situation comparable with that of persons without this disability where such measures are reasonable on the basis of accessibility requirements in laws and other statutes, and with consideration to: the financial and practical conditions, the duration and nature of the relationship or contact between the operator and the individual, and other circumstances of relevance.”

United Kingdom

Prohibition of discrimination on the ground of disability is not explicitly mentioned in the **Human Rights Act 1998** that incorporated the European Convention on Human Rights in the British legislation.⁸⁹ It was however included in the **Equality Act 2010** that prohibits discrimination on various grounds, with specific provisions on employment, provision of service, exercise of public function and education in **England, Scotland and Wales**.⁹⁰ It includes direct and indirect discrimination, multiple and intersectional forms of discrimination, as well as harassment and victimisation. The duty to provide reasonable accommodation is incorporated as “reasonable adjustments” and its denial is recognised as a form of discrimination on the ground of disability.⁹¹ However, in 2017 the CRPD Committee expressed concerns over the fact that the duty to make reasonable adjustments to the common parts of residential properties in the Equality Act 2010 was not yet in force.⁹² For instance, organisations of persons with disabilities reported that schools are not under a statutory duty to make reasonable adjustments in relation to physical features.⁹³

In **Northern Ireland** a single equality law still does not exist. There was a consultation exercise in 2004 and a ministerial statement in 2005, but there have been no further public developments since. As a consequence, there are many disparities between the legislation in place in Northern Ireland and in the rest of the United Kingdom.⁹⁴ The CRPD Committee expressed that in practice persons with disabilities living in Northern Ireland are not adequately protected against direct and indirect disability-based discrimination and against discrimination by association.⁹⁵ It also regretted the low level of redress in rulings adopted by the judiciary when adjudicating cases of discrimination against persons with disabilities in the whole United-Kingdom.⁹⁶

Two independent equality bodies co-exist in the United Kingdom. The **Equality and Human Rights Commission** enforces equality legislation in the Great Britain. It can assist victims of alleged discrimination, represent them in front of courts and bring proceeding in its own name. It also provides guidance to individuals, employers and other organisations, reviewing the effectiveness of the law and taking legal enforcement action to clarify the law and address significant breaches of rights. The **Equality Commission for Northern Ireland** promotes equality and provide legal support to alleged victims of discrimination in Northern Ireland. It can take none legally binding decisions or recommendations in relation to discrimination cases. Contrary to the Equality and Human Rights Commission it cannot represent parties in courts.

Contacts of the Equality and Human Rights Commission (Great Britain)

Postal address: Fleetbank House 2 - 6 Salisbury Square London EC4Y 8JX United Kingdom Telephone number: 0808 800 0082	Website: http://www.equalityhumanrights.com/ General email address: international@equalityhumanrights.com
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Contacts of the Equality Commission for Northern Ireland

Postal address: Equality House 7-9 Shaftesbury Square Belfast BT2 7DP Telephone number: +46 8 120 20 700	Website: www.equalityni.org General email address: information@equalityni.org
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⁸⁹ See article 14 of the Bill of Rights, on protection from discrimination. Text available here: https://www.legislation.gov.uk/ukpga/1998/42/pdfs/ukpga_19980042_en.pdf.

⁹⁰ See in particular section 4 on protected characteristics and section 15 on discrimination arising from disability. Text available here: https://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf.

⁹¹ See under sections 20-22 and 189 of the Equality Act 2010.

⁹² UN Committee on the Rights of Persons with Disabilities, Concluding Observations on the United Kingdom (2017), paragraph 16.

⁹³ Implementation of the United Nations Convention on the Rights of Persons with Disabilities, Alternative report - Great Britain, Led by Inclusion Scotland, Disability Rights UK and Disability Wales (January 2017), page 6.

⁹⁴ For more details see section 5 of Northern Ireland Assembly, “Equality and Human Rights Legislation in Northern Ireland: A Review”, available here: <http://www.niassembly.gov.uk/globalassets/Documents/RaISe/Publications/2011/OFMDFM/7511.pdf>.

⁹⁵ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on the United Kingdom (2017), paragraph 16.

⁹⁶ *Ibid*, paragraph 16.