



EUROPEAN HUMAN RIGHTS REPORT

Issue 3 – 2019

**Ensuring the rights of persons with disabilities to equality and
non-discrimination in the European Union**

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www.edf-feph.org

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The European Disability Forum series on human rights

The European Disability Forum (EDF) is an independent organisation representing the interests of more than 80 million persons with disabilities in Europe. EDF publishes series of Human Right Reports on the rights of persons with disabilities, selecting topics based on what is most relevant to EDF's members and policymakers across Europe.

The first issue of EDF Human Rights Report focused on the United Convention on the Rights of Persons with Disabilities (CRPD), marking its 10th anniversary and providing an overview on the commitment to the CRPD in Europe. The second issue gave an overview of the state of play on the 2030 Agenda and the Sustainable Development Goals (SDGs) in Europe, in order to respect, protect and fulfil the CRPD. This year's report focuses on equality and protection against discrimination for persons with disabilities.

EDF Human Rights Reports are available on EDF webpage: <http://www.edf-feeph.org/other-publications>.

The purpose of this series is to track progress over time on the realisation of the rights of persons with disabilities in Europe. The series stimulates comparison between European countries and studies key aspects of the implementation of the CRPD at the national and European levels. For instance, this first EDF Human Rights Report demonstrated the rapid progress in ratifying the CRPD in Europe, albeit with some important gaps. Not all countries have ratified the Optional Protocol to the CRPD and many states have made declarations and reservations which limit their commitment to the CRPD.

This new issues on ensuring the rights of persons with disabilities to equality and non-discrimination in the European Union comes at a timely moment. 2018 marked the universal ratification of the CRPD in the European Union – now ratified by the EU and all its Member States – and the adoption by CRPD Committee of General Comment No. 6 on Equality and Non-Discrimination, which brings more clarity on States parties' obligations under the Convention. Sadly, 2018 also marked the 10th year anniversary of the European Commission's proposal of a EU directive prohibiting discrimination in access to goods and services, education, social protection and health ("Horizontal Equal Treatment Directive), currently blocked at the Council by EU Member States. At both the EU and the national level, important and complementary roles are to be played in ensuring equality of persons with disabilities, as required by the CRPD. In this context, the findings of this report will inform our, and hopefully others', work on equality and the Horizontal Equal Treatment Directive.

Glossary

Civil society: organisations within a society that work to promote specific purposes and rights, usually taken to include state-run institutions, families, charities, and community groups.

Competences (of the European Union): areas within which the EU can act, for instance adopt legislation. Competences are defined by the EU treaties. In other areas, the EU Member States are competent to act.

Concluding observations (of the CRPD Committee): document adopted by the CRPD Committee as part of the review mechanisms of the implementation of the Convention on the Rights of Persons with Disabilities in States parties. The document contains areas of concerns and recommendations for improvement.

Council of the European Union: the institution representing the member states' governments and where national ministers from each EU country meet to adopt laws and coordinate policies.

Discrimination: any distinction, exclusion or restriction on the basis of one or several grounds (sex, race, disability, sexual orientation, gender identity, etc.) which damage or nullify the recognition, enjoyment or exercise, on an equal basis with others, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (see Chapter 2).

Disabled people's organisations (DPOs) / organisations of persons with disabilities: organisations comprising a majority of persons with disabilities which represent the interests and defend the human rights of persons with disabilities through self-representation and advocacy.

(EU) Directive: legislative act that sets out a goal that all EU countries must achieve. The directive must be transposed at the national level. It means that it is up to the individual countries to decide their own laws on how to reach these goals.

European Commission: the EU's politically independent executive arm. Its core responsibilities include proposing EU laws and policies and monitoring their implementation.

European Disability Forum (EDF): an independent organisation representing the rights of 80 million persons with disabilities in Europe. It is a unique platform which brings together representative organisations of persons with disabilities from across Europe and is run by persons with disabilities and their families.

European Parliament: the elected parliamentary institution of the European Union which has the role to adopt EU legislation.

European Union (EU): a unique economic and political union between 28 European countries – 27 countries as of 30 March 2019.

Member States (of the European Union): the EU consists of 28 countries – 27 as of 30 March 2019, also called "Member States". Each Member State is party to the founding treaties of the Union, and thereby subject to the privileges and obligations of membership. Unlike members of most international organisations, the Member States of the EU are subjected to binding laws in exchange for representation within the common legislative and judicial institutions.

Optional Protocol to the Convention on the Rights of Persons with Disabilities: an additional legal instrument that allows individuals or groups of individuals to complain to the CRPD Committee about situations in which their rights under the CRPD are not respected.

Reasonable accommodation: necessary and appropriate modification and adjustment, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with other of their human rights and fundamental freedoms. To be “reasonable” the accommodation cannot impose a disproportionate or undue burden. Denial of reasonable accommodation is a form of discrimination.

States Parties (to the CRPD): countries which have signed and ratified the CRPD and have committed to making the rights of persons with disabilities a reality. The European Union, having concluded the CRPD, is also a State party.

United Nations Convention on the Rights of Persons with Disabilities (CRPD): an international human rights treaty that reaffirms that all persons with disabilities must enjoy all human rights and fundamental freedoms. It clarifies that all persons with disabilities have the right to participate in civil, political, economic, social and cultural life of the community just as anyone else.

Foreword

From EDF President, Yannis Vardakastanis



I am very pleased to introduce you to the third issue in our series of Human Rights Reports by the European Disability Forum (EDF). EDF is an independent organisation defending the rights of 80 million persons with disabilities in Europe. The purpose of this series is to track progress over time on the realisation of the rights of persons with disabilities in Europe.

EDF's vision for Europe is a Europe where equality is guaranteed for all. Our third human rights report focuses on equality and non-discrimination of persons with disabilities. While the European integration has progressed and the European Union and all its member states have committed to ensure the rights of persons with disabilities by ratifying the UN Convention on the Rights of Persons with Disabilities, there are still considerable gaps in protection against discrimination on the ground of disability in the EU. The progress started almost two decades ago with the adoption of the 2000 Employment Equality Directive prohibiting discrimination at the workplace and in vocational training, and the 2008 Commission's proposal of a horizontal equal treatment directive, regrettably did not lead to a harmonisation in all countries of the EU of protection against discrimination in all fields of life. Member States of the EU are still blocking the adoption of the Commission's proposal which aims at prohibiting discrimination in access to goods and services, education, social protection and health.

In these circumstances, we found it crucial to evaluate current gaps in laws and practices, and adopt strong and ambitious recommendations on how to ensure the rights to equality and non-discrimination of all persons with disabilities.

EDF will not wait another decade to act and call for actions. Discrimination, exclusion and poverty remains endemic among population with disabilities, and therefore we will continue to analyse such important issues in our human rights reports and strongly advocate with our members at the national and EU levels. Our next human rights issue will thus be on poverty.

I wish you a good read!

Yannis Vardakastanis

EDF President

From Chair of Equinet

From Theresia Degener, Chair of the CRPD Committee (2016-2018)

Summary

Chapter 1- Background: The United Nations Convention on the Rights of Persons with Disabilities

The CRPD is an international human rights treaty that reaffirms that persons with disabilities must enjoy all human rights and fundamental freedoms. It clarifies that persons with disabilities have the right to participate in civil, political, economic, social and cultural life of the community, just as anyone else. The CRPD stipulates what public and private authorities must do to ensure and promote the full enjoyment of these rights by all persons with disabilities.

The CRPD was adopted on 13 December 2006 by consensus of the General Assembly of the United Nations (UN). On 30 March 2007, the CRPD was opened for signature at UN Headquarters in New York. At the date of publication of this report, 177 countries worldwide (91% of UN members) and the European Union (EU) are States Parties to the CRPD, making it the world's most quickly ratified international human rights treaty.

In Europe, the CRPD has also been ratified rapidly. The EU has been a State party to the CRPD since 2011. **Ireland was the last EU member state to ratify the Convention in March 2018**; this means that now every Member State of the EU has ratified. It is the first time that we have universal ratification of an international human rights treaty in the EU.

All the candidate countries to the EU (Albania, Montenegro, Serbia, the Former Yugoslav Republic of Macedonia (FYROM) and Turkey) ratified the CRPD, as well as three out of the four European Economic Area/European Free Trade Association (EEA/EFTA) countries (Iceland, Norway and Switzerland have ratified; Liechtenstein not yet). The European microstates of Andorra, San Marino and Monaco have also ratified. **Monaco joined in September 2017.**

EDF calls on Liechtenstein to ratify the CRPD without further delay.

The full text of the CRPD is available on the webpage of the CRPD Committee: www.ohchr.org/EN/HRBodies/CRPD.

Map on the ratification of the CRPD in Europe

Include updated Map on the ratification of the CRPD in Europe (see first human rights report, page 16).

Worldwide map of ratification is available on the webpage of the UN: <http://www.un.org/disabilities/documents/maps/enablemap.jpg>

Chapter 2- International human rights standard of equality and non-discrimination: Article 5 CRPD and its General Comment

Equality and non-discrimination are very important principles enshrined in the Convention on the Rights of Persons with Disabilities (CRPD). These principles have been qualified as “cross-cutting” because all rights and provisions of the CRPD should be applied to all equally, without discrimination.

Equality and non-discrimination are mentioned under many articles of the CRPD. The most important are **article 2** – which gives the definition of discrimination based on disability and the definition of reasonable accommodation – and **article 5** – which focuses on the obligation of non-discrimination of States parties to the Convention. In addition, the Committee on the Rights of Persons with disabilities adopted its **General Comment No. 6 on equality and non-discrimination in March 2018**. This General Comment explains in detail how article 5 should be interpreted and applied by the States that have ratified the Convention.

2.1 What constitutes discrimination based on disability?

Article 2 of the CRPD defines discrimination based on disability as:

‘Any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.’

In practice, the Committee recognises many forms of discrimination:

- **Direct discrimination:** situation when, in a similar situation, persons with disabilities are treated less favourably than others because of their impairment. For example, an employer who would refuse to consider the application of a job seeker with disabilities, solely because of his or her impairment, is directly discriminating based on disability.
- **Indirect discrimination:** situation where laws, policies or practices appear neutral but have a disproportionate negative impact on persons with disabilities. It occurs when an opportunity that appears accessible, excludes certain persons because their status does not allow them to benefit from the opportunity itself.¹ For example, if a school does not provide textbooks in Braille and Easy-Read formats, children with visual impairment and children with intellectual disabilities are indirectly discriminated against.
- **Multiple discrimination:** situation where a person can experience discrimination on two or several grounds, in the sense that discrimination is compounded or aggravated.² The Committee stressed that grounds include, but are not limited to: disability; health status; genetic or other predisposition towards illness; age; race; colour; descent; sex; pregnancy and maternity/paternity; civil; family or career status; gender identity and gender expression;

¹ General Comment No. 6 (2018) on equality and non-discrimination, paragraph 18 (b).

² General Comment No. 6, paragraph 19.

sexual orientation; language; religion; political or other opinion; national, ethnic, indigenous or social origin; migrant, refugee or asylum status; belonging to a national minority; economic or property status; birth; age; or a combination of any of those grounds or characteristics associated with any of those grounds.³ For instance, a lesbian woman with disabilities might face discrimination on different grounds because she is a lesbian, because she is a woman and because of her disability.

- **Intersectional discrimination:** situation where several grounds operate and interact with each other at the same time, in such a way that they are inseparable and expose individuals to unique types of disadvantage and discrimination.⁴ For instance, forced sterilization or abortion may constitute a form of intersectional discrimination on the grounds of sex and disability. See *Chapter 3 for more information*.
- **Discrimination by association:** situation where one faces discrimination based on association with a person with disabilities. For example, a mother of a child with disabilities may be discriminated against by a potential employer due to the fear of the employer that she will be a less engaged/available worker because of her child's disability.⁵
- **Denial of reasonable accommodation:** According to Article 5(3) of the CRPD, States Parties are obliged to promote equality and to eliminate discrimination by taking all appropriate steps to ensure that reasonable accommodation is provided. Reasonable accommodation is defined in Article 2(4) of the CRPD as "necessary and appropriate modification and adjustment not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with other of all human rights and fundamental freedoms". The denial to provide reasonable accommodation⁶ is a form of discrimination (Article 2(3) of the CRPD).⁷

The reasonableness of the measure refers to the relevance, appropriateness and effectiveness of the measure for the persons with disabilities concerned. In parallel, the "disproportionate or undue burden" concept sets a limit to the obligation. Accommodations should not create an excessive or unjustifiable burden for the 'accommodating party' – it is a proportionality test that is the result of a **case by case approach**. The duty bearer would have to prove that the burden is disproportionate or undue. In all cases, the costs of the measures should never fall on the person with disabilities.⁸

For example, the refusal of a school to adjust curricula learning materials and teaching strategies may constitute a denial of reasonable accommodation amounting to discrimination, when without such measure, the student with disabilities is excluded from mainstream education, as long as the adjustment is proportionate to the aim. A school may be required, for instance, to adopt a specific education plan for a student with disabilities, providing him or

³ General Comment No. 3, paragraph 4(c), and General Comment No. 6, paragraph 21.

⁴ General Comment No. 3 (2014) on women and girls with disabilities, paragraphs 4(c) and 16; General Comment No. 6, paragraph 19.

⁵ General Comment No. 3, paragraph 17 (c).

⁶ Article 2 of the CRPD defines "reasonable accommodation" as "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms."

⁷ Article 2 of the CRPD; General Comment No. 6, paragraph 18 (c).

⁸ General Comment No. 6, paragraph 25.

her with the relevant learning material (e.g. in braille or Easy-to-Read format) and measures (e.g. additional time to complete exams) to enable him or her to fully enjoy the right to inclusive education.

- **Harassment:** it is a form of discrimination “when unwanted conduct related to disability or other prohibited grounds takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.”⁹ Examples include bullying, and its online form (cyber bullying and cyber hate), as well as disability based violence in all its forms. For instance, verbal and physical attacks on a person with physical and intellectual disabilities, on the account of his or her disability, are considered as a form of harassment amounting to discrimination.

Specific measures, such as affirmative measures (for example quotas), that imply a preferential treatment of persons with disabilities over others, do **not** constitute discrimination because they address historic and/or systematic/systemic exclusion from the benefits of exercising rights, and are necessary to achieve equality of persons with disabilities (article 5 CRPD). For instance, temporary measures for increasing the numbers of women with disabilities employed in the private sector and support programmes to increase the number of students with disabilities in tertiary education are allowed.¹⁰

2.2 What are the States parties' obligations?

Under Article 5 of the Convention, States parties have the obligation to:

- Recognise that all persons are equal before and under the law, and entitled to equal protection and benefit of the law without discrimination
- Prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds
- Take all appropriate steps to ensure that reasonable accommodation is provided in order to promote equality and eliminate discrimination

In practice, it means they must **refrain from any action that discriminate against persons with disabilities**. The Committee explains in General Comment No. 6 that the States must modify or abolish all existing laws, regulations, customs and practices that constitute such discrimination. It is crucial that States **identify areas and persons with disabilities that require the adoption of specific measures to accelerate or achieve equality, such as for women and girls with disabilities**.¹¹ In that sense, they must specifically recognise multiple and intersectional forms of discrimination (see Chapter 3).

In addition, to ensure the effective enjoyment of the rights to equality and non-discrimination, States should adopt **enforcement measures**, such as measures to raise awareness of all people about the rights of persons with disabilities, measures to ensure that the rights are actionable in domestic courts and provide access to justice to all persons who have experienced discrimination, as well as measures to ensure protection from retaliation, etc.¹²

⁹ General Comment No. 6, paragraph 18 (d).

¹⁰ General Comment No. 6, paragraphs 25(c).

¹¹ General Comment No. 6, paragraphs 30-32.

¹² General Comment No. 6, paragraphs 31.

The **obligation of States Parties to protect persons with disabilities from all forms of discrimination applies immediately**, and this for all the rights in the CRPD. For example, the State cannot invoke that it does not have sufficient resources to enroll a child with disabilities in mainstream education or to take reasonable accommodations as to allow the child to participate.

[Concrete examples of good practices/improvement from EU national level to be added]

Chapter 3- Multiple and intersectional forms of discrimination

To fully address discrimination on the ground of disability, it is important to take into consideration other discriminatory grounds that interact with disability. In many cases, persons with disabilities may indeed experience discrimination either based on disability and one or several other grounds (multiple discrimination), or on the interaction of disability with one or other several grounds (intersectional discrimination). This reality is increasingly taken into account in the work of civil society, and should be recognised and addressed by policy-makers and legislators.

*“Intersectional discrimination recognizes that **individuals do not experience discrimination as members of a homogenous group but rather, as individuals with multidimensional layers of identities, statuses and life circumstances.** It means acknowledging the lived realities and experiences of heightened disadvantage of individuals caused by multiple and intersecting forms of discrimination, **which requires targeted measures with respect to disaggregated data collection, consultation, policymaking, enforceability of non-discrimination and provision of effective remedies.**” – CRPD Committee, General Comment No. 3 on women and girls with disabilities (2016), paragraph 16.*

As discussed in Chapter 2, these multiples and intersectional forms of discrimination are recognised by the Committee on the Rights of Persons with Disabilities, as well as other UN treaty bodies, such as the Committee on Elimination of Discrimination against Women. However, their recognition is lacking under EU law and in many national anti-discrimination laws (see Chapters 4 and 5). This lack of protection, especially at the EU level, means that there is few incentive for public authorities to address discrimination faced by people with intersectional identities.

This chapter provides examples on how different discriminatory grounds can interact.

3.1 Gender and disability: women and girls with disabilities

Women and girls with disabilities frequently face discrimination based on their gender and disability. This is one of the reasons why the CRPD included a provision specific on women with disabilities.

Article 6 of the CRPD requires States Parties to the Convention to “recognize that women and girls with disabilities are subject to multiple discrimination” and “take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.” In General Comment No. 3, the CRPD Committee stressed that, not only multiple discrimination, but also intersectional discrimination, affects women and girls with disabilities and requires specific targeted measures.¹³

[Quote from Ana/ a member of the Women Committee]

In practice, many women with disabilities are still treated unequally and denied their human rights. For instance, the testimonies of women with intellectual or psychosocial disabilities are sometimes dismissed in court proceedings because of removal of legal capacity or “lack of credibility”, thus denying those women justice and effective remedies as victims of violence. Health care facilities that may appear neutral still discriminate against women with disabilities when they do not include

¹³ UN CRPD Committee, General Comment No. 3 on women and girls with disabilities (2016), paras 4, 10 and 16.

accessible examination beds for gynaecological screenings, sign language interpretation for deaf women or easy to understand information for expecting mothers with intellectual disabilities. Finally, forced sterilization, female genital mutilation and coerced abortion are other clear examples of denial of rights that many women and adolescents with disabilities suffer, without giving their consent or fully understanding the intentions.¹⁴ These acts and practices are a violation of fundamental rights and should be condemned and effectively sanctioned.

3.2 Age and disability

Young persons with disabilities

Young persons with disabilities face multiple and intersectional forms of discrimination in many areas. The United Nations High Commissioner for Human Rights noted that youth with disabilities are among the most marginalized of all young persons, facing stigma and barriers in their access to education, employment, health care and social services.¹⁵

EDF youth committee members particularly referred to the **area of work and employment**, where young persons with disabilities face much more barriers than other young people.

*“As a disabled person, it's already difficult to get a job, **but it's twice as difficult when you are young and disabled**. Because you not only face the accessibility issues, but you have also to demonstrate your experience. And how can you gain experience when a young disabled person face a lot barriers in order to find even an internship? We don't have the same opportunities and because of all the barriers we face, we often need additional time to do things. So, what a non-disabled person will achieve until its 25 years we may need 30 for the same.”* – Kamil Goungor, President of EDF Youth Committee

“In the field of work, I believe that I may be discriminated in the sense that I have a lot more barriers to overcome. In France, it is extremely tough for everyone to find a job, because experience is often required. The issue revolves around the fact that with more and more graduates coming onto the market, but a scarcity of jobs offers, this results in a lot of competition. For persons with disabilities, it is even more complicated as not only do we face the barrier of accessibility, but human support by a personal assistant able to assist us in our professional life, as well as with our personal needs, is virtually non-existent.” – Mathieu Chatelain, member of EDF Youth Committee

In addition, young people with psychosocial disabilities are **more likely to face exclusion and be denied access to proper healthcare, including mental health and sexual and reproductive health**. In a report of the European Youth Forum on multiple discrimination and young people in Europe, disability was reported among the grounds that lead young people to isolation due to a lack of adequate support measures, notably in the education system.¹⁶ In the online survey conducted by the European Youth Forum, respondents with disabilities also reported that being left without any help to face personal difficulties and challenges led to deeper depression and even to alcohol or drug abuse, failures at

¹⁴ European Disability Forum, 2nd Manifesto on women & girls with disabilities.

¹⁵ Report of the United Nations High Commissioner for Human Rights on “Youth and human Rights” (2018), paragraph 62. Report available here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/193/07/PDF/G1819307.pdf?OpenElement>

¹⁶ European Youth Forum, Multiple discrimination and young people in Europe (2015), page 31. Report available here: <https://www.youthforum.org/sites/default/files/publication-pdfs/Multiple-discrimination-and-young-people-in-Europe.pdf>.

exams and drop out.¹⁷ At an age when young people feel they might not been taken seriously or be qualified as “exaggerating,” young people with disabilities, especially with psychosocial disabilities, face even more stigma.

Older persons with disabilities

Older persons with disabilities frequently face discrimination on the ground of age and disability, in law and in practice. In many countries, age impacts negatively in disability assessment and allocation of disability benefits, resulting in older people with disabilities not being offered the same level of quality or ranges of support as younger people with disabilities.¹⁸

*“States must ensure that all older persons enjoy equal access to assistive technology without discrimination. Eligibility criteria for the provision of assistive devices must follow a human rights-based approach to ensure that they are not discriminatory. **There are, for instance, age limits in access to disability benefits and mobility allowances that can be used for the purchase of assistive devices. Such criteria constitute discrimination on the basis of age and it must therefore be carefully assessed whether, while benefiting certain groups, they exclude others who have an equal right and comparable need to access the support.**”* –

Independent Expert on the enjoyment of all human rights by older persons¹⁹

Discriminatory schemes that put an upper age limits to disability allowance and benefits are found in Ireland, France, Spain (Catalonia) and Sweden. In addition, AGE Platform Europe reported that at least eight EU countries do not offer personal assistance in old age.²⁰

Example: Discriminatory Mobility Allowance Scheme in Ireland

The Mobility Allowance Scheme of Ireland directly discriminated against older persons with disabilities by setting an upper age limit to qualify for the allowance. Persons with disabilities older than 66 years old who could not walk could not qualify to apply for the allowance granted to make private transport arrangement, unless they were already receiving the allowance before their 66th birthday.

In 2008, a complaint was brought to the Irish Ombudsman on the issue. The Ombudsman found that the terms of the Scheme was unfairly discriminatory and contrary to the Equal Status Act 2000.²¹ She recommended that the Department of Health completes the review of the Mobility Allowance and revise it to render it compliant with the Equal Status Act 2000.

As a consequence of the report of the Ombudsman the Irish government closed the Mobility Allowance Scheme to new applicants in 2013.²² An alternative scheme called “Transport Support Scheme” is being devised to replace it.²³

¹⁷ *Ibid.*

¹⁸ AGE Platform Europe, Draft Outline of General Comment on Article 5 Equality & Non-Discrimination (2017), available here: http://age-platform.eu/sites/default/files/AGE_input_Draft_GCArt5_CRPD.pdf.

¹⁹ Report of the Independent Expert on the enjoyment of all human rights by older persons (July 2017).

²⁰ AGE Platform Europe, Draft Outline of General Comment on Article 5 Equality & Non-Discrimination (2017), available here: http://age-platform.eu/sites/default/files/AGE_input_Draft_GCArt5_CRPD.pdf.

²¹ See report of the Irish Ombudsman, “Too Old to be Equal?” available here: <https://www.ombudsman.ie/publications/reports/too-old-to-be-equal/Too-Old-to-be-Equal-.pdf>.

²² Read on the website of the Department of Health or Ireland: <https://health.gov.ie/blog/press-release/government-decision-in-relation-to-a-travel-subsidy-for-people-with-a-disability/>.

²³ Read more on Citizens Information Ireland:

http://www.citizensinformation.ie/en/travel_and_recreation/transport_and_disability/mobility_allowance.html.

Addressing ageism is fundamental in ensuring the rights of all people. This includes not only the right to personal assistance and medical care, but to full participation in society and community life.²⁴

3.3 Sexual orientation, gender identity and disability: LGBTI persons with disabilities

Many lesbian, gay, bisexual, transgender or intersex (LGBTI) people with disabilities are at risk of multiple and intersectional forms of discrimination in all areas of life. It is particularly the case in the areas of employment, education²⁵ and healthcare.

LGBTI persons with disabilities face increased risks of school bullying, segregation in specific schools, denial of labour and trade union rights and difficult access to vocational training programs. Transpeople with disabilities who face mental health issues, totally unrelated to their gender identity, may face barriers when trying to access support by mental health providers. They are also more likely to experience poverty and financial difficulties due to multiple barriers they face to obtain employment, including both disability and gender identity discrimination.²⁶

*“D/deaf & disabled LGBTIQ+ people face additional discrimination; disablism and lack of inclusion by LGBTIQ+ peers and fear of LGBTIQ+ phobia & exclusion from disabled peers. This makes us feel lost, alone and like we don’t belong to either community; **always bear in mind we are all intersectional!**”* – Anis Akhtar, a disabled intersex person of colour²⁷

Adoption of measures to promote inclusion and combat discrimination on the grounds of disability, sexual orientation and gender identity, including awareness-raising measures targeted to health and legal professionals, employers, as well as to persons with disabilities and LGBTI people themselves, are needed.

3.4 Race, migratory status and disability

Black and Minority Ethnic persons with disabilities

Black people with disabilities and people from ethnic minorities with disabilities are often victims of multiple and intersectional discrimination in all areas of life.

A report published by BRAP highlights that detention rates in the United Kingdom under the Mental Health Act 1983 are 6% lower than average for white British mental health patients, while they are 32% higher than average for black Caribbean patients and 24% higher for multiple heritage white and black Caribbean patients.²⁸ Black and minority ethnic women are three to six times more likely to be admitted to mental health units than average and more likely to be compulsory admitted. On the other hand, they are less likely to be admitted to women’s crisis houses and less likely to be referred to talking therapies.²⁹ The former psychiatrist and activist Suman Fernando has suggested that the health

²⁴ See 9th Session of the Open-ended Working Group on Aging Topic: Autonomy and Independence, Submission by the European Network on Independent Living, available here: https://social.un.org/ageing-working-group/documents/ninth/Inputs%20NGOs/ENIL_Autonomy.pdf.

²⁵ ILGA-Europe’s contribution to the civil society shadow report on the implementation by the EU of the Un Convention on the Rights of Persons with Disabilities (May 2014), page 3.

²⁶ Transgender Europe, Oppression Squared: D/deaf and disabled trans experiences in Europe, page 53.

²⁷ Transgender Europe, Oppression Squared: D/deaf and disabled trans experiences in Europe, page 37.

²⁸ BRAP, Improving mental health for BME communities: an event report, page 3, available here: https://docs.wixstatic.com/ugd/27aa99_a45774f42cb040a7a4d6e0a132559170.pdf?index=true.

²⁹ Mental Health Foundation, Recovery and resilience: African, African-Caribbean and South Asian women’s narratives of recovering from mental distress, available here: <http://www.survivor-research.com/images/documents/black%20women%20recovery%20and%20resilience%20final%20report.pdf>.

service could be “institutionally racist.” Consequently, persons with disabilities from ethnic minorities might be particularly affected and directly or indirectly discriminated against.

The CRPD Committee recommended States to ensure proper data gathering necessary to the development of policies and programmes addressing multiple and intersectional forms of discrimination against persons from different races or ethnic groups with disabilities.

Example of recommendations adopted by the CRPD Committee in relation to ethnic minorities with disabilities³⁰

12. The Committee is concerned that, albeit the existence of a large number of different ethnic groups in Peru, indigenous and minority persons with disabilities are not considered as being at high risk of suffering multiple discrimination and that no data on their number and situation exists. In this connection, the Committee expresses its concern at the situation of indigenous and minority persons with disabilities, in particular women and children with disabilities that live in rural areas, as well as persons with disabilities of African descent.

13. The Committee urges the State party to improve its data gathering in order to have clear statistics on indigenous and minority persons with disabilities. The Committee recommends that the State party place emphasis on the development of policies and programmes on indigenous and minority persons with disabilities, in particular women and children with disabilities that live in rural areas, as well as persons of African descent, in order to address the multiple forms of discrimination that these persons may suffer.

Migrants with disabilities

Asylum seekers and migrants with disabilities are also particularly susceptible to intersectional discrimination. In a report published by the European Network Against Racism, a migrant explained that there are no set infrastructures and policy to help migrants with disabilities.

One migrant with disabilities reported:

*“I need to have disability papers. However, **in Germany no one cares about disabled migrants, no one questions whether you are disabled or healthy...**They wrote that I am fit and healthy even though one of my feet and two toes on the other have been amputated.”* – one migrant with disabilities (ENAR report)

Another comment indicates that migrants have not received proper support for their physical and psychosocial disabilities for as long as eight years:

“I’ve been living in Greece for 8 years now. My situation is very bad. My mother and one of my brothers are disabled, while the other one is mentally ill. We need help. We live in a very hard state, with no health care and no proper roof to protect us.” – one migrant with disabilities (ENAR report)

The CRPD Committee addressed specifically the situation of refugees and asylum seekers when it reviews the implementation of the CRPD by States parties. It notes the importance of the accessibility of refugee status determination procedures, equal access to disability support scheme and benefits and incorporation of disability in refugee and asylum legislation.

³⁰ CRPD Committee, Concluding Observations on Peru (CRPD/C/PER/CO/1).

Example of recommendations adopted by the CRPD Committee in relation to refugees and asylum seekers with disabilities³¹

15. The Committee is **deeply concerned about the precarious situation of refugees and asylum-seeking persons with disabilities** in the State party and also notes with concern that the refugee status determination procedures are not accessible. While noting the indication of the State party delegation that refugees with disabilities are entitled to the same disability support schemes and benefits — including wheelchairs, care and information — as Cypriot citizens with disabilities, the Committee notes with concern that equal access to these support schemes and benefits is not available for all refugees and asylum seekers. The Committee furthermore notes with concern that, in the Refugees Law, refugees with disabilities are referred to as “persons with special needs”, a subcategory of “vulnerable persons”, which constitutes an approach that may hamper the application of a human rights- based approach.

16. The Committee recommends that the State party:

- (a) Ensure the accessibility of all refugee status determination procedures;
- (b) Ensure an adequate standard of living, including access to disability support schemes and allowances in law and in practice for all non-nationals with disabilities residing in the State party on an equal basis with Cypriot citizens;
- (c) Incorporate disability, and a human-rights-based approach to disability, in the Refugees Law and all other relevant refugee and asylum legislation, policies and programmes;
- (d) Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, and endorse the 2016 Charter on Inclusion of Persons with Disabilities in Humanitarian Action.

³¹ CRPD Committee, Concluding Observations on Cyprus (CRPD/C/CYP/CO/1) (2017).

Chapter 4- State of play of protection at national level

Austria

Recommendations of the CRPD Committee (CRPD/C/AUT/CO/1) – 2013

12. The Committee recognises the progress made in Austria in developing anti-discrimination laws at the federal and regional levels, however it notes that with one exception, the only remedy available is financial compensation. The exception is in employment matters, where further training programs and improvements of conditions in employment may be mandated. It appears that systems for dealing with matters of multiple discrimination, where disability is combined with gender or ethnicity, require more development.

13. The Committee recommends that the discrimination laws be strengthened by broadening the available remedies to include other remedies that require a change of behaviour in people who discriminate against persons with disabilities, such as injunctive powers. The Committee recommends that the State party examine the appropriateness of the current structures used to deal with situations of multiple discrimination.

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, Laender and municipalities) commits itself to ensuring the equal treatment of disabled and non-disabled persons in all spheres of every-day life.”³²

The legislation differs between the Federal level and the regions. All nine Austrian provinces/regions have their own non-discrimination laws. 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 Social Ministry Service Centre (“*Sozialministeriumservice*” formerly “*Bundessozialamt*” 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 **Ombudsman 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. Finally, the **Litigation Association of NGO’s against discrimination** (“*Klagsverband*”) and the **Austrian Disability Council** also have the right to file class action suits.

Contacts of the Ombudsman for People with Disabilities

³² See English translation of the Austrian Constitution at: https://www.constituteproject.org/constitution/Austria_2009.pdf

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Belgium

Recommendations of the CRPD Committee (CRPD/C/BEL/CO/1) – 2014

11. The Committee takes note of the anti-discrimination law which recognizes the concept of reasonable accommodation. It remains concerned about the situation of foreign persons with disabilities living in Belgium who experience situations of discrimination, and about cases of discrimination by association with a person or child with disabilities.

12. The Committee recommends that the State party review the remedies provided for by this law to ensure that complainants are able to seek injunctions and can receive damages once their claims for discrimination have been proven in court. It urges the State party to strengthen protection against discrimination, including discrimination by association, through the introduction of positive discrimination measures and awareness-raising and training of public officials at all levels.

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 grounds.³³ 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**.³⁴ The Anti-Discrimination Act covers all forms of discrimination, including multiple discrimination and denial of reasonable accommodation. However, the concept of reasonable accommodation remains not well defined, understood and applied.

Organisations of persons with disabilities reported that current policies and programs 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 in Belgium remains one of the lowest in Europe.

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 recommendations to parties of a dispute. Belgian organisations of persons with disabilities highlight their 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).

Contacts of the Interfederal Center for Equal Opportunities

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³³ Text available here: http://www.senate.be/doc/const_fr.html#t1.

³⁴ See articles 377bis, 405quater, 422quater, 438bis, 442ter, 444, 453bis, 514bis, 525bis, 532bis, 534quater of the Criminal Code.

Bulgaria

<i>Recommendations of the CRPD Committee (CRPD/C/BGR/CO/1) – 2018</i>
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15. The Committee notes with concern that, under the current legislation, denial of reasonable accommodation is not explicitly recognised as an act of prohibited discrimination in all areas. It is concerned about the lack of enforceability of the decisions issued by the Commission for the Protection against Discrimination, and also at the insufficient implementation of provisions of legislation on multiple and intersectional discrimination as an aggravated form of discrimination. It is also concerned about the barriers that persons with disabilities face in their access to remedies in cases of discrimination.

16. The Committee recommends that the State party, in accordance with general comment No. 6 (2018) on equality and non-discrimination:

(a) Amend its legislation and explicitly prohibit denial of reasonable accommodation as an act of disability-based discrimination in all spheres of life;

(b) Repeal provisions that discriminate against persons with disabilities in legislation;

(c) Improve the enforceability of decisions on disability-based discrimination, including decisions with regard to multiple and intersectional forms of discrimination that persons with disabilities may face;

(d) Ensure that persons with disabilities, including persons under guardianship, have access to remedies in cases of disability-based discrimination, and strengthen the capacity of the Equality and Human Rights Commission to exercise its mandate concerning procedures for protection of persons with disabilities against discrimination.

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 education³⁵ and employment.³⁶ 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

³⁵ 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.

³⁶ See article 16 of the Law on Protection Against Discrimination and article 24 of the Law on Integration of People with Disabilities.

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

Recommendations of the CRPD Committee (CRPD/C/HRV/CO/1) – 2015

7. The Committee is concerned that for the entitlement to social services and benefits, distinction is made between different causes of impairments, such as war or accidents. It is further concerned that exclusion and segregation in education, work or residential living is not regarded as a form of discrimination.

8. The Committee recommends that disability based services and benefits are made available to all persons with disabilities irrespective of the cause of their impairment. It further recommends that the State party takes legislative and policy measures to clarify that disability based exclusion and segregation in education, employment and other fields of social life, is a form of discrimination.

The principles of equality and non-discrimination is enshrined in article 14 of the Constitution of Croatia. However, disability is not explicitly listed in the discriminatory grounds. It is covered by the **Anti-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.³⁷ In addition, the **Law on Professional Rehabilitation and Employment of Persons with Disabilities** regulates reasonable accommodation in the workplace.

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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Telephone number:

Website:

www.posi.hr

General email address:

³⁷ See article 4 of the Anti-Discrimination Act.

Cyprus***Recommendations of the CRPD Committee (CRPD/C/CYP/CO/1) – 2017***

11. The Committee is concerned that national legislation lacks a definition of discrimination that recognizes that denial of reasonable accommodation is a form of disability-based discrimination in all areas of life.

12. The Committee recommends that the State party adopt and implement immediately a definition of discrimination fully aligned with the Convention, explicitly recognizing the denial of reasonable accommodation across all areas of life, including within the public and private sectors as disability-based discrimination.

13. The Committee is concerned about the absence of effective legislation and mechanisms addressing multiple and intersectional discrimination, including against persons with disabilities of ethnic minorities. It is furthermore concerned at the lack of disaggregated data on cases of multiple and intersectional discrimination.

14. The Committee recommends that the State party enact appropriate and enforceable legislation, policies and programmes preventing multiple and intersectional disability-related discrimination, including effective sanctions and remedies, and that it collect and disseminate disaggregated data on such cases. It also recommends that the State party take into account the Sustainable Development Goals, especially target 10.2 and 10.3, while implementing article 5 of the Convention.

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, as reflected in the 2017 concluding observations of the CRPD Committee.³⁸ 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.³⁹

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:**

³⁹ See Submission of the Pancyprrian 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

Recommendations of the CRPD Committee (CRPD/C/CZE/CO/1) – 2015

9. The Committee notes with concern that under the Anti-Discrimination Act duty to provide reasonable accommodation is limited to employment and related labor relations.

10. The Committee calls upon the State party to amend its legislation and extend the prohibition of denial of reasonable accommodation to other areas besides employment and labor relations, in line with provisions of article 5 of the Convention.

11. The Committee is concerned at admitted absence of case law relating to judicial protection from disability-based discrimination.

12. The Committee calls upon the State party to take all necessary measures, including training of the judiciary, strengthening of independent human rights bodies and capacity-building of persons with disabilities and their organisations, to foster the use of available legal remedies by persons with disabilities facing the discrimination and inequality.

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.⁴⁰ 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 **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.

Contacts of the Public Defender of Rights

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Denmark

⁴⁰ See articles 2 and 3 of the Anti-Discrimination Act.

Recommendations of the CRPD Committee (CRPD/C/DNK/CO/1) – 2014

14. The Committee notes the establishment of the Government's anti-discrimination unit which has a mandate to monitor and prevent discrimination against persons with disabilities; however, it is concerned that the State party lacks comprehensive anti-discrimination legislation that would provide protection from discrimination on the basis of disability beyond the labour market. The Committee is also concerned at the lack of legal remedies for persons with disabilities whose rights under the Convention have been violated, and the absence of available information thereon.

15. The Committee urges the Governments of Denmark, the Faroe Islands and Greenland to adopt new comprehensive cross-sectoral anti-discrimination legislation that extends protection to beyond the labour market and affirms the denial of reasonable accommodation as a form of discrimination on the basis of disability. The Committee recommends that the State party take steps to ensure that reasonable accommodation is provided in all spheres of society, without any exemption; that it ensure effective legal remedies to persons with disabilities, including the possibility of submitting complaints related to discrimination on the basis of disability to the Board of Equal Treatment; and that it promote better awareness of the Convention among rights-holders.

16. The Committee is concerned at the lack of disaggregated data on cases of multiple and intersectional discrimination, and at the inadequate measures for dealing with cases of intersectional discrimination — for example, disability combined with gender or ethnicity — which require more development.

17. The Committee recommends that the State party collect and disseminate disaggregated data on cases of multiple and intersectional discrimination, and that it adopt effective and specific measures to prevent multiple and intersectional forms of discrimination, including permitting complaints of discrimination on more than one ground, establishing higher levels of compensation for victims, and imposing higher penalties for perpetrators.

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.

A **new anti-discrimination legislation preventing discrimination on the ground of disability and promoting equal treatment of persons with disabilities** entered into force on 1st July 2018.⁴¹ It applies to all public and private activities in all areas of society. However, it does not include the concept of reasonable accommodation neither does it prohibit the denial of reasonable accommodation as a form of discrimination on the ground of disability. Representatives of organisations of persons with disabilities reported that it is a huge challenge that persons with disabilities cannot submit complaints concerning the lack of reasonable accommodation or accessibility to the Board of Equal Treatment.

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

⁴¹ "Lov om forbud mod forskelsbehandling på grund af handicap", text available in Danish here: <https://www.retsinformation.dk/Forms/R0710.aspx?id=201823>.

file independent complaints or complaints on behalf of complainant before the National Board of Equal Treatment.

Contacts of the Danish Institute for Human Rights

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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.⁴² 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**.⁴³ 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.⁴⁴

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.⁴⁵ 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 discrimination on the ground of disability, including direct and indirect discrimination, harassment, denial of reasonable

⁴² See Equal Treatment Act, paragraph 3. English translation available here:
<https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/503052017002/consolide>

⁴³ Equal Treatment Act, paragraph 2.

⁴⁴ Equal Treatment Act, paragraph 11.

⁴⁵ 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.

accommodation, as well as an instruction or order to discriminate.⁴⁶ It applies to all public and private activities, excluding private life, family life and practice of religion.⁴⁷ The obligation to promote equality applies to both public authorities and education providers, educational institutes and employers. 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

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Telephone number:

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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,⁴⁸ 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.⁴⁹ However, organisations 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. Disability thus became the most common ground of discrimination in France.⁵⁰ Most of the claims received (50%) concern discrimination in the field of employment.⁵¹

Contacts of the Defender of Rights

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⁴⁶ Non-Discrimination Act, Sections 8(2) and 15.

⁴⁷ See Non-Discrimination Act, Section 2. English translation available here: <https://www.finlex.fi/en/laki/kaannokset/2014/en20141325.pdf>

⁴⁸ See article 225 of the French Criminal Code.

⁴⁹ 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.

⁵⁰ See rapport annuel d'activité 2017 du Défenseur des droits, page 36, available in French here: https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/raa2017_num-accessibilite-10.04.2018.pdf

⁵¹ *Ibid.*

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Germany

Recommendations of the CRPD Committee (CRPD/C/DEU/CO/1) – 2015 13. The Committee is concerned that:

- (a) Current legislation does not contain a definition of reasonable accommodation and that the denial of such accommodation is not considered a form of discrimination;
- (b) The understanding of how reasonable accommodation can be implemented is still largely underdeveloped relating to administration, jurisdiction and social services provision;
- (c) There is no fixed schedule for implementing legal requirements at either the federal or Länder level.

14. The Committee recommends that the State party:

(a) Develop protection against discrimination for persons with disabilities, including intersectional discrimination, as a comprehensive, cross-cutting right in domestic legislation, including at Länder level, and collect relevant data on case law;

(b) Take steps to ensure that reasonable accommodation provisions are enshrined in law as an immediately enforceable right in all areas of law and policy, with an explicit definition in the law in line with Article 2 of the Convention, and that the denial of reasonable accommodation is recognised and punishable as a form of discrimination.

(c) Undertake systematic training on reasonable accommodation at federal, Länder and local levels across all sectors and with the private sector.

Article 3(3) of the Basic Law (Grundgesetz) states since 1994 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.

The aim of the BGG is to commit federal public authorities to eliminate and avoid disadvantages and discrimination faced by persons with disabilities and to guarantee their participation in society on an equal basis with others. In all federal administrative procedures, therefore, deaf persons are entitled to ask for gratuitous sign language interpretation and blind persons can claim to receive free of costs all documents in braille. Since January 2018 all persons with intellectual and psychosocial disabilities can communicate with federal offices in plain language and all these offices are obliged to provide legal documents, forms and contracts in easy to read formats. 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 scope of application of the AGG is basically broader than the BGG as it covers the whole field of equal opportunities in employment and civil law. But in fact it is weaker than the BGG, as discrimination under civil law is, for instance, prohibited only when it arises in a large number of cases.⁵² such as mass

⁵² 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

contracts. Rental contracts, therefore, are covered only by the AGG, if more than 50 flats are rented by the same owner. As a result of such criteria many tenants are not protected against discrimination.

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 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.

Contacts of the Federal Anti-Discrimination Agency

Postal address:

Glinkastraße 24, 10117 Berlin, Germany

Website:

www.antidiskriminierungsstelle.de or www.anti-discrimination-agency.com

Helpline:

+49(0)3018 555 1865

Telephone number:

+49(0)3018 555 1855

General email address:

beratung@ads.bund.de

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 Confederation of Disabled People (N.C.D.P.) , this provision was incorporated as an obligation in the **Law 4488/2017**. The Presidential Decree, according to the aforementioned law, 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, lead to *de facto* discrimination against children with disabilities.⁵³

⁵³ 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>.

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.

Contacts of the Greek Ombudsman

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17 Halkokondyli St., 104 32 Athens, Greece

Helpline:

+30 213 1306 600

Telephone number:

+30 213 1306 794

Website:

<http://www.synigoros.gr/>

General email address:

press@synigoros.gr

Hungary

Recommendations of the CRPD Committee (CRPD/C/HUN/CO/1) – 2012

15. The Committee notes with concern that the State party's legislation, including Act XXVI of 1998 on the Rights and Equal Opportunities of Persons with Disabilities and Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities, fails to state that denial of reasonable accommodation constitutes discrimination.

16. The Committee calls upon the State party to take steps to ensure that its legislation explicitly prescribes that failure to provide reasonable accommodation constitutes a prohibited act of discrimination.

Article XV of Hungary's Fundamental Law ensure fundamental rights to every person without discrimination, including on the ground of disability. This Article also states that "By means of separate measures, Hungary shall protect families, children, women, the elderly and those living with disabilities." **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 contains an explicit provision on reasonable accommodation. However, reasonable accommodation was introduced in 2015 as one of the basic principles in the new **National Disability Program (2015-2025)** and is enshrined in the **Act I of 2012 on the Labour Code**,⁵⁴ **Act CXCIX 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. This was also addressed recently in the

⁵⁴ See Act I of 2012 on the Labour Code, section 51(5).

2017 'List of issues prior to submission of the combined second and third periodic reports of Hungary.'⁵⁵

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 recommendations in relation to discrimination, and more importantly can initiate the review of legislation at the Constitutional Court.

Contacts of the Equal Treatment Authority

Postal address:

Krisztina körút 39/B, 1013 Budapest,
Hungary

Helpline:

06 80 203 939 (only from Hungary)

Telephone number:

+36 (0)1 795 2975

Website:

<http://www.egyenlobanasmod.hu/>

General email address:

ebh@egyenlobanasmod.hu

Contacts of the Commissioner for Fundamental Rights

Postal address:

H-1051 Budapest Nádor u. 22, Hungary

Telephone number:

(+36) (1) 475-7100

Website:

<http://www.ajbh.hu>

General email address:

hungarian.ombudsman@ajbh.hu

Ireland

There is no general provision in the Constitution of Ireland that prohibits discrimination on the ground of disability.⁵⁶ Discrimination on the ground of disability is prohibited under the **Equal Status Act 2000**⁵⁷ and the **Employment Equality Act**.⁵⁸ 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

⁵⁵ 2017 'List of issues prior to submission of the combined second and third periodic reports of Hungary', under article 5. In the past, UN treaty bodies had addressed the issue, see in particular CRPD/C/HUN/CO/1 as of 27 September 2012, paragraph 15-16, and CEDAW/C/HUN/CO/7-8 as of 1 March, 2013, points 28-29.

⁵⁶ Text available here: [https://www.taoiseach.gov.ie/eng/Historical Information/The Constitution/February 2015 - Constitution of Ireland .pdf](https://www.taoiseach.gov.ie/eng/Historical%20Information/The%20Constitution/February%202015%20-%20Constitution%20of%20Ireland.pdf).

⁵⁷ Text available here: [http://www.lawreform.ie/ fileupload/Restatement/First%20Programme%20of%20Restatement/EN ACT 2000 0008.PDF](http://www.lawreform.ie/fileupload/Restatement/First%20Programme%20of%20Restatement/EN_ACT_2000_0008.PDF).

⁵⁸ Text available here: [http://www.lawreform.ie/ fileupload/RevisedActs/WithAnnotations/EN ACT 1998 0021.PDF](http://www.lawreform.ie/fileupload/RevisedActs/WithAnnotations/EN_ACT_1998_0021.PDF)

assistance to help people defend their rights, and contributing to legal cases. **Contacts of the Human Rights and Equality Commission**

Postal address:

16 – 22 Green Street, Dublin 7 D07 CR20,
Ireland

Telephone number:

+ 353 (0) 1 8589601

Website:

<https://www.ihrec.ie/>

General email address:

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Italy

Recommendations of the CRPD Committee (CRPD/C/ITA/CO/1) – 2016

9. The Committee is concerned that national legislation lacks a definition of reasonable accommodation and does not include an explicit recognition that the denial of reasonable accommodation constitutes disability-based discrimination.

10. The Committee recommends that the State party immediately adopt a definition of reasonable accommodation aligned with the Convention, and enact legislation that explicitly recognizes the denial of reasonable accommodation as disability-based discrimination across all areas of life, including within public and private sectors.

11. The Committee is concerned about the absence of legislation and mechanisms with a mandate that addresses multiple discrimination, including effective sanctions and remedies.

12. The Committee recommends that the State party enact appropriate legislation and policies designating enforcement mechanisms to address multiple and intersectional discrimination, including effective sanctions and remedies, and that it provide training to all departments and ensure persons with disabilities have information on lodging complaints and seeking remedies. It also recommends that the State party take into account article 5 of the Convention while implementing targets 10.2 and 10.3 of the Sustainable Development Goals.

Article 3 of the Italian Constitution establishes the principle of equality before the law of all citizens, including those with a list of particular conditions that do not include disability. However, it does not mention or develop the concept 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.⁵⁹ In 2013, the Court of Justice of the European Union had already judged that by not introducing in its legislation

⁵⁹ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Italy (2016), paragraphs 9 and 11.

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.⁶⁰

There is no strong independent equality body that promotes equality and prevents and investigates discrimination on the ground of disability. There is a body named UNAR (**Office for the promotion of equal treatment and the removal of discrimination based on race or ethnic origin**), within the Ministry of Equal Opportunities, that considers disability generically and as a transversal condition. In the Ministry for Labor and Social Affairs there is also a Body for the equality between men and women (**National Equality Councilor**) which scope is limited to gender based discrimination in the field of employment: it does not cover disability issues, the gap between persons with and without disability and disability gender gap. The actions run by these Bodies, established for the detection of and fight against discrimination (UNAR) and for the equality between men and women (National Equality Councilor), are not monitored in terms of efficacy and efficiency on the protection of persons with disabilities and in particular of girls and women with disabilities.

Contacts of the National Equality Councilor

Postal address:

Via della Ferratella in Laterano 51 -00184
Roma, Italy

Telephone number:

+39 06 6779 2267

Website:

<http://www.unar.it/about-us-2/?lang=en>

General email address:

segreteriaunar@governo.it;
unar@unar.it

Contacts of the National Equality Councilor

Postal address:

Via Forno 8 - 00192 Roma, Italy

Website:

<http://www.lavoro.gov.it/ministro-e-ministero/Organi-garanzia-e-osservatori/ConsiglieraNazionale/Consigliera-nazionale-di-parita/Pagine/default.aspx>

Telephone number:

+39 06 4683 4031

General email address:

consigliernazionaleparita@lavoro.gov.it

Latvia

Recommendations of the CRPD Committee (CRPD/C/LVA/CO/1) – 2017

8. The Committee is concerned that the Law on Disability is narrow in its scope and purpose, lacks an explicit prohibition of discrimination on the basis of all types of disability, and does not recognize the denial of reasonable accommodation as disability-based discrimination. The Committee regrets the absence of effective complaint mechanisms for disability-based discrimination and the lack of disaggregated data collected on cases of disability-based discrimination and their resolution.

9. The Committee recommends that the State party:

(a) Review its legislation to incorporate a definition of discrimination that explicitly addresses all forms of discrimination on the basis of disability, including intellectual and psychosocial disability, across all sectors and areas of life and that recognizes the denial of reasonable accommodation, and multiple and intersectional forms of discrimination;

⁶⁰ 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>.

(b) Establish an effective mechanism to monitor all aspects of compliance with anti-discrimination legislation, including by providing accessible methods for persons with disabilities to seek legal remedies and by ensuring sanctions for the perpetrators of discrimination;

(c) Reinforce the provision of training developed in consultation with, and that involve the participation of, disabled persons' organisations on the non-discrimination of persons with disabilities and the duties concerning the provision of reasonable accommodation to public and private actors, in particular members of the legal profession and the judiciary, law enforcement officers, civil servants, employers, the State Labour Inspectorate, educational and health professionals, and persons with disabilities themselves;

(d) Collect and analyse disaggregated data on cases of disability-based discrimination and publish information on their resolution, including details on the sanctions for perpetrators and remedies for victims;

(e) Take into account article 5 of the Convention, while implementing targets 10.2 and 10.3 of the Sustainable Development Goals.

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.

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.⁶¹ They also noted that very little work on prevention of discrimination or recognition of discrimination is conducted among professionals, employers and the general public.⁶²

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. It was also reported that the office is not very popular among people who do not believe its work can make any changes. Hence, in practice few persons with disabilities send their complaints.

Contacts of the Office of the Ombudsman

Postal address:

Baznicas Street 25, LV-1010, Riga, Latvia

Telephone number:

+371 67686768

Website:

<http://www.tiesibsargs.lv/en>

General email address:

tiesibsargs@tiesibsargs.lv

Lithuania

Recommendations of the CRPD Committee (CRPD/C/LTU/CO/1) – 2017

⁶¹ 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.

⁶² *Ibid*, page 3.

13. The Committee is deeply concerned that the State party does not consistently apply the concept of reasonable accommodation in relation to the principle of non-discrimination.

14. With reference to target 10.2 of the Sustainable Development Goals, the Committee recommends that the State party take all the legislative, juridical and administrative measures necessary to:

(a) Promote, ensure and monitor the provision of reasonable accommodation for persons with disabilities across all public and private sectors;

(b) Recognize the denial of reasonable accommodation as a form of discrimination on the basis of disability.

Article 29 of the Constitution of Lithuania enshrines 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, including on the ground of disability, by prohibiting direct and indirect discrimination, harassment and instruction to discriminate. It applies to all legal acts, including labour, education and the access to goods and services.⁶³ However, the law 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.⁶⁴

The issue relating to reasonable accommodation was raised by organisations of persons with disabilities⁶⁵ 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.⁶⁶ The burden of proof is transferred to the perpetrator, it means that the person complained against must prove that the principle of equal opportunities has not been violated.

The **Office of the Equal Opportunities Ombudsperson** is in charge of ensuring the prevention of discrimination and implementation of equal opportunities in Lithuania, as well as educational activities aiming at promotion of equal opportunities. It is a quasi-judicial body that can adopt decisions addressed to State agencies and legal persons to request them to stop discriminatory acts. It can also refer claims to judiciary, or other appropriate institutions for further investigation.

Contacts of the Office of the Equal Opportunities Ombudsperson

Postal address:

Gedimino pr. 11, LT- 01103 Vilnius, Lithuania

Telephone number:

+370 706 63899

Website:

www.lygybe.lt

General email address:

lygybe@lygybe.lt

Luxembourg

Recommendations of the CRPD Committee (CRPD/C/LUX/CO/1) – 2017

10. The Committee is concerned that national legislation lacks a definition of reasonable accommodation in fields other than employment and education. It is also concerned that, apart from

⁶³ 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?jfwid=-oo3xjf4tu>

⁶⁴ Lithuanian Forum for the Disabled, Proposal for the List of issues in relation to the initial report of the Republic of Lithuania, paragraph 7.

⁶⁵ *Ibid.*

⁶⁶ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Lithuania (2016), paragraph 16.

the education field, the law does not include an explicit recognition that the denial of reasonable accommodation constitutes disability-based discrimination. The Committee is concerned that other fields, such as employment and accessibility to information and communications technology, lack the enforceable legal provisions to sanction the denial of reasonable accommodation or, alternatively, the enforcement of legal provisions depends on the goodwill of officials and available resources.

11. The Committee recommends that the State party expedite the adoption of a definition of reasonable accommodation aligned with the Convention and enact legislation that explicitly recognizes and sanctions the denial of reasonable accommodation as disability-based discrimination across all areas of life, including within the public and private sectors. It also recommends that the State party set up appropriate monitoring mechanisms to ensure compliance with legislative and other policy measures relating to the denial of reasonable accommodation, including an effective complaint mechanism and appropriate remedies in the event of non - compliance.

12. The Committee notes with concern that the institutions responsible for the monitoring of discrimination, including the Consultative Council of Human Rights and the Centre for Equal Treatment, lack 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. It is also concerned by the insufficient resources to carry out their mandates, including effective sanctions and remedies. It is further concerned by the absence of cases of discrimination on grounds of disability, which could be partly explained by the lack of awareness by persons with disabilities of existing mechanisms to defend their rights.

13. The Committee recommends that the State party take into account article 5 of the Convention while implementing targets 10.2 and 10.3 of the Sustainable Development Goals, and that it:

(a) Enact appropriate legislation and policies providing the relevant entities with the requisite legal powers to enable them to effectively monitor discrimination, including multiple and intersectional discrimination, and in the private sector;

(b) Ensure sufficient human and financial resources and the necessary powers so that they can remedy complaints of disability-based discrimination in a timely and cost-effective manner;

(c) Ensure persons with disabilities have information on lodging complaints and seeking remedies;

(d) Establish an accurate system of data collection with regard to the number of complaints received and dealt with by the institutions tasked with monitoring discrimination.

The Constitution of Luxembourg refers to equality but does not explicitly mentions discrimination or any discriminatory grounds.⁶⁷ 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 recognition of the concept of reasonable accommodation and, except in the field of education, its denial is not recognised as a form of discrimination on the ground of disability.⁶⁸

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

⁶⁷ 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.

⁶⁸ 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.

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.⁶⁹

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.⁷⁰ 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.⁷¹

Contacts of the Centre for Equal Treatment

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Website:

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Malta

Recommendations of the CRPD Committee (CRPD/C/MLT/CO/1) – 2018

7. The Committee notes with concern that the Equal Opportunities (Persons with Disability) Act refers to multiple discrimination, but does not, however, protect persons with disabilities from intersectional discrimination in its article 3A (1). It is also concerned that the institutions responsible for the monitoring of disability-based discrimination, including the Commission for the Rights of Persons with Disability, lack the human and financial resources to address complaints relating to discrimination in a timely manner and that legal aid is not provided to victims. While noting an increase in the number of complaints, the Committee remains concerned that the limited number of complaints by persons with disabilities, as reported by the State party, may indicate that such persons are not aware of the complaint procedures in place and of their rights, and that they may lack the necessary support to seek redress.

8. With reference to its general comment No. 5 (2017) on living independently and being included in the community and targets 10.2 and 10.3 of the Sustainable Development Goals, the Committee recommends that the State party, while reviewing its legislation to bring it into line with the Convention:

(a) Amend article 3A (4) of the Equal Opportunity (Persons with Disability) Act to protect persons with disabilities against intersectional discrimination;

(b) Ensure the provision of adequate human, technical and financial resources to the Commission for the Rights of Persons with Disability, so that it can address disability-based discrimination complaints in a timely and cost-effective manner;

⁶⁹ Nëmme 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.

⁷⁰ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Luxembourg (2017), paragraph 12.

⁷¹ *Ibid.*

(c) Ensure that persons with disabilities are provided with accessible information on the mechanisms and procedures for lodging complaints and seeking remedies.

While the Maltese Constitution prohibits discrimination, disability is not included in the discriminatory grounds enshrined in the Constitution.⁷² The **Equal Opportunities (Persons with Disability) Act** of 2000 sets the anti-discrimination legal framework for persons with disabilities.⁷³ It was amended in 2016 to strengthen the right of equality of persons with disabilities.⁷⁴ Apart from this, the 2016 amendments to the EOA resulted in the reorganisation of the structure of the Commission with the creation of the post of a Commissioner for the Rights of Persons with Disability. This entailed the change in the nomenclature of the Commission itself.

The amended legislation includes direct and indirect discrimination, multiple and intersectional forms of discrimination, as well as harassment. Denial of reasonable accommodation is recognised as a form of discrimination on the ground of disability only in relation to employment.⁷⁵ The **Labour Code** prohibits discrimination on the ground of⁷⁶ disability and require employers to take “appropriate measures” to ensure employment of persons with disabilities.⁷⁷

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. However, in practice the Commission has never opened a court case on behalf of individuals because of lack of allocated funds to do so.

Unfortunately, contact with organisations of persons with disabilities show that some are little aware, if at all, of this legal framework, and of the change in name and role 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 by the Malta Union of Teachers create many barriers which results in discrimination against many students with disabilities.⁷⁸

Contacts of the Commission for the Rights of Persons with Disabilities

Postal address:

G5 Offices, Salvu Psaila Street, Birkirkara
BKR9077 Malta

Telephone number:

+356 2226 7600

SMS only:

+ 356 79788555

Website:

www.crpdp.org.mt

General email address:

helpdesk@crpd.org.mt

Netherlands

Article 1 of the Dutch Constitution prohibits discrimination but disability is not explicitly mentions in the discriminatory grounds. In its report submitted to the CRPD Committee the Dutch government

⁷² See article 45(3) of the Constitution of Malta. English version available here: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566>.

⁷³ English version available here: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8879&l=1>.

⁷⁴ 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.

⁷⁵ See Equal Opportunities (Persons with Disability) Act, Part IV, article 7(2)(d).

⁷⁶ Labour Code of Luxembourg, Article L. 251-1 (1).

⁷⁷ *Ibid*, Article L. 562-1 (5).

⁷⁸ 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.

noted that a bill to include disability had been submitted to the Parliament.⁷⁹ 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 accommodation⁸⁰ “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.⁸¹ Incitation to, or participation in, acts of hatred or discrimination based on disability are explicitly prohibited by the **Dutch Criminal Code**.⁸² 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.”⁸³

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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Poland

Recommendations of the CRPD Committee (CRPD/C/POL/CO/1) – 2018

7. The Committee is concerned at the absence of:

⁷⁹ Initial report on the implementation by the Netherlands of the UN Convention on the Rights of Persons with Disabilities (12 June 2018), page 16.

⁸⁰ 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.

⁸¹ 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.

⁸² See articles 137d and 137f of the Dutch Criminal Code.

⁸³ 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.

- (a) A clear definition of reasonable accommodation and obligation to provide it to all persons with disabilities in all spheres of life, including the absence of recognition of denial of reasonable accommodation as a form of disability-based discrimination;
- (b) Recognition of multiple and intersectional discrimination in the anti-discrimination legislation, and prohibition of discrimination against all persons with disabilities on grounds such as sex, age, ethnicity, sexual orientation and gender identity in all areas of life;
- (c) Effective mechanisms to prevent and protect persons with disabilities against discrimination and violation of their right to equal treatment;
- (d) Awareness of the State and public actors as well of persons with disabilities themselves about the right of persons with disabilities to equality and non-discrimination, including to accessible legal information and legal counselling.

8. Recalling its general comment No. 6 (2017) on Equality and Non-Discrimination, the Committee recommends that the State party:

- (a) Enact legislation that define and recognize reasonable accommodation across all areas of life, and that sanctions its denial as a form of disability-based discrimination;**
- (b) Explicitly recognize and prohibit multiple and intersectional discrimination on the grounds of disability, sex, age, ethnicity, gender identity and sexual orientation and any other status in all areas of life within its anti-discrimination legislation, policies and strategies, including the Equality Act;**
- (c) Establish judicial and quasi-judicial mechanisms to ensure prevention and protection of persons with disabilities against discrimination, including comprehensive redress;**
- (d) Take effective measures to provide continuous training and awareness-raising for civil servants and non-state actors, including persons with disabilities themselves about the rights of persons with disabilities to equality and non-discrimination, including to accessible legal information and free legal counselling.**

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.⁸⁴ 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 (Act on Equal Treatment)**,⁸⁵ contrary to other grounds which benefit from a wider scope of protection against discrimination.⁸⁶ 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 recognised 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

⁸⁴ See article 32 of the Constitution of Poland. English text available here: <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

⁸⁵ English text available here: <https://www.rpo.gov.pl/en/content/act-3rd-december-2010-implementation-some-regulations-european-union-regarding-equal>.

⁸⁶ 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.

in compliance with the CRPD.⁸⁷ For instance, there is no intersectional approach to disability or recognition of multiple discrimination. Discrimination against women and girls with disabilities⁸⁸ and against persons with psychosocial with disabilities⁸⁹ 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.⁹⁰

The **Commission 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. In practice, representatives of organisations of persons with disabilities reported that the Commissioner seldom bring cases against public authorities. Most cases are against

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Portugal

Recommendations of the CRPD Committee (CRPD/C/PRT/CO/1) – 2016

13. The Committee is concerned that the State party has not established in law the obligation to provide reasonable accommodation to persons with disabilities in the exercise of all their rights.

14. The Committee recommends that the State party explicitly establish in law the obligation to provide reasonable accommodation to persons with disabilities in all areas covered by the Convention.

15. The Committee is concerned 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.

16. The Committee recommends that the State party review its legislation and policies in order to provide persons with disabilities with an effective legal remedy in cases of discrimination.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*, page 13.

⁸⁹ Human Rights Defender, Realisation of the obligations arising from the Convention on the Rights of Persons with Disabilities by Poland, page 5.

⁹⁰ *Ibid.*

Article 13 of the Portuguese Constitution⁹¹ enshrines the principles of equality and non-discrimination. However, disability is not included in the list of discriminatory grounds. Scholars have pointed out that only few discriminatory grounds are listed to serve as example and that the list is not meant to be complete nor exclusive. **Law No. 46/2006 of August 28**⁹² 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.)⁹³ Formally it prohibits direct and indirect discrimination on the ground of disability, in all its forms. Yet, the law does not objectively describe what discrimination is and does not explicitly recognize the concept of reasonable and its denial as a form of discrimination. The law only mentions, in relation to employment and 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 recognised.

Organisations of persons with disabilities reported that in practice discrimination on the ground of disability is still taking place. A majority of Portuguese enquired by the Eurobarometer recognised that there is widespread discrimination of persons with disabilities.⁹⁴ Organisations also emphasized the fact that there is a widespread lack of knowledge among persons with disabilities and their organisations about their rights and the Portuguese legislation.⁹⁵ According to some studies there is no specific public institution with the mandate to receive complains and apply immediate penalties or power to close institutions where discriminatory practices take place. The Portuguese police is not aware of the law against discrimination.

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.”⁹⁶ 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 explicitly assigned independent body that effectively assist people with their claims of discrimination on the ground of disability in all areas of life**. In practice, it was reported that the **Portuguese Ombudsman** receives more and more claims every year and addresses them thoroughly. It has also created a dedicated telephone line to assist people with their questions and claims.

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⁹¹ English text available here: <https://dre.pt/constitution-of-the-portuguese-republic>.

⁹² Text in Portuguese here: http://www.inr.pt/bibliopac/diplomas/lei_46_2006.htm.

⁹³ See article 4 of Law No. 46/2006 of August 28.

⁹⁴ 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>.

⁹⁵ Disability and Human Rights Observatory, Persons with Disabilities in Portugal – Human Rights Indicators 2017, available here: <http://oddh.iscsp.ulisboa.pt/index.php/en/2013-04-24-13-36-12/publications-of-oddh-researchers/item/352-report-oddh-2017>

⁹⁶ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Portugal (2016), paragraph 15.

Romania

The Constitution of Romania refers to the principle of discrimination in several articles.⁹⁷ 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.⁹⁸ The Ordinance explicitly prohibits discrimination on a number of grounds, including disability.⁹⁹ However, it does not provide a definition of the meaning of discrimination on the ground of disability, as well as of any other grounds.¹⁰⁰ Even **Law no. 448/2006 of 6 December 2008 regarding the Protection and Promotion of the Rights of Disabled Persons**¹⁰¹ that refers to “the prevention and fight against discrimination” does not define discrimination on the ground of disability.¹⁰²

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.¹⁰³ 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 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.¹⁰⁴

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Slovakia

Recommendations of the CRPD Committee (CRPD/C/SVK/CO/1) – 2016

⁹⁷ 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>.

⁹⁸ Governmental Ordinance 137/2000, article 3.

⁹⁹ Governmental Ordinance 137/2000, article 2(1).

¹⁰⁰ See: European network of legal experts in gender equality and non-discrimination, Country report Non Discrimination, Romania 2017, page 41.

¹⁰¹ English text available here: <http://www.equalrightstrust.org/ertdocumentbank/LEGE%20448%20engleza.pdf>.

¹⁰² Article 3 of Law no. 448/2006.

¹⁰³ See articles 5 and 83 and of Law no. 448/2006: “reasonable adaptation to the workplace.”

¹⁰⁴ 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>.

13. The Committee is concerned that legislation that prohibits disability-based discrimination has not been extended beyond the employment sector.

14. The Committee recommends that the State party enact disability-based anti-discrimination legislation in all sectors, and provide training and guidance for the public and private sectors.

15. The Committee is concerned that reasonable accommodation has been misinterpreted as a temporary special measure and that there is a lack of an explicit definition of reasonable accommodation in legislation. The Committee is concerned that the denial of reasonable accommodation as disability-based discrimination is not recognised in law.

16. The Committee recommends that the State party amend section 2a (1) of the Anti-Discrimination Act to include denial of reasonable accommodation as disability-based discrimination; and to introduce specific provisions in relation to sanctions for non-compliance.

17. The Committee is concerned that the law does not recognize multiple and intersectional discrimination, especially against women and girls with disabilities and members of ethnic minorities with disabilities, especially Roma people.

18. The Committee recommends that the State party amend section 2a (1) of the Anti-Discrimination Act to include intersectional and multiple discrimination as a form of discrimination, and definitions of the term, and adopt legal remedies and sanctions to reflect the aggravated nature of violations arising from multiple and intersectional discrimination.

19. The Committee is concerned about the lack of awareness of the public and private sectors about multiple discrimination and the obligation to provide reasonable accommodation.

20. The Committee recommends that the State party provide the public and private sectors with mandatory training on multiple discrimination and legal obligations to provide reasonable accommodation in all sectors.

Article 12(2) of the Constitution of the Slovak Republic¹⁰⁵ 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.**

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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¹⁰⁵ English text available here: <https://www.prezident.sk/upload-files/46422.pdf>.

Slovenia***Recommendations of the CRPD Committee (CRPD/C/SVN/CO/1) – 2018***

6. The Committee is concerned about:

- (a) The lack of public policies and measures focusing on and prioritizing equality, and the protection of persons with disabilities against all forms of discrimination, and the lack of recognition of the denial of reasonable accommodation as a form of disability-based discrimination;
- (b) The lack of capacity, coordination and measurable impact of focal points designed for combating discrimination, and the absence of effective affirmative actions in this regard;
- (c) Multiple and intersectional forms of discrimination against persons with disabilities, including Roma, Sinti and persons with disabilities of other ethnic groups, and the lack of information about discrimination against LGBTI persons with disabilities.

7. The Committee recommends that the State party:

- (a) Enact legislation that explicitly recognises and sanctions the denial of reasonable accommodation, across all areas of life, as a form of disability-based discrimination;
- (b) Strengthen the capacity and role of the focal points designed for combating discrimination, including discrimination against persons with disabilities, and provide them with adequate resources and capacity to effectively respond to cases of disability-based discrimination, including the denial of reasonable accommodation and multiple and intersectional discrimination;
- (c) Explicitly incorporate in its anti-discrimination legislation, policies and strategies, the recognition of multiple and intersectional discrimination on the basis of sex, gender, age, disability, migrant, asylum seeking, refugee, ethnic background, sexual orientation and any other status. The Committee also recommends that the State party provides for judicial and quasi-judicial remedies in cases of discrimination from public and/or private actors, disseminate information among persons with disabilities about such remedies, provide redress and adequate compensation, and establish sanctions for perpetrators;
- (d) Take into account article 5 of the Convention in implementing targets 10.2 and 10.3 of the Sustainable Development Goals.

Article 63 of the **Slovenian Constitution** states that incitement to discrimination is unconstitutional¹⁰⁶ 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)**¹⁰⁷ 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 the field of employment, healthcare, education and social protection.¹⁰⁸ The ZIMI Acts includes in particular: prohibition of discrimination by state authorities,

¹⁰⁶ English text available here: <http://www.us-rs.si/media/constitution.pdf>.

¹⁰⁷ English text available here: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/68656/89155/F265912074/SVN68656.pdf>.

¹⁰⁸ 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).

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.

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.¹⁰⁹

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Spain

Recommendations of the CRPD Committee (CRPD/C/ESP/CO/1) – 2011

19. The Committee welcomes the regulatory amendments introduced under Act 26/2011 that would abolish the need to have a disability certificate to bring a discrimination claim before a judicial body. However it regrets the lack of information on cases of discrimination, and it is concerned that persons with disabilities will still be marginalized. The Committee is further concerned by the lack of information on reasonable accommodation. It is also concerned that, in practice, disability affects parents' guardianship or custody of their children and that legal protection against discrimination on the grounds of disability is not enforceable in cases of discrimination due to perceived disability or association with a person with a disability.

20. The Committee urges the State party to expand the protection of discrimination on the grounds of disability to explicitly cover multiple disability, perceived disability and association with a person with a disability, and to ensure the protection from denial of reasonable accommodation, as a form of discrimination, regardless of the level of disability. Moreover, guidance, awareness-raising and training should be given to ensure a better comprehension by all stakeholders, including persons with disabilities, of the concept of reasonable accommodation and prevention of discrimination.

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 Constitution¹¹⁰ 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.¹¹¹ The law includes direct and indirect discrimination,

¹⁰⁹ Shadow report of the group of non-governmental organisations from Slovenia on implementation of CRPD in Slovenia (2008 – 2017), page 11.

¹¹⁰ Article 96(1) of the Spanish Constitution.

¹¹¹ Spanish text available here: <http://www.boe.es/boe/dias/2013/12/03/pdfs/BOE-A-2013-12632.pdf>.

discrimination by association, harassment, non-compliance with accessibility requirement and positive action measures legally established, and the denial of reasonable accommodation.¹¹² 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 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.¹¹³

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Sweden

Recommendations of the CRPD Committee (CRPD/C/SWE/CO/1) – 2014

9. The Committee is concerned that the new bill on discrimination, which classifies the denial of reasonable accommodation as discrimination, exempts organisations employing fewer than 10 employees. It is also concerned that the concept of denial of reasonable accommodation is not considered to be of general application throughout the legal framework of the State party and that authorities from the different levels of government are not bound by this legal obligation.

10. The Committee urges the State party to review the proposed draft bill with a view to ensuring its full harmonization with the provisions of article 5 of the Convention, and to take all appropriate steps to ensure that reasonable accommodation is provided in all spheres of society, in both public

¹¹² See in particular article 63 of the Royal Legislative Decree 1/2013.

¹¹³ Read more on the website of the Spanish Ombudsman: <https://www.defensordelpueblo.es/en/news/spanish-ombudsman-made-2175-recommendations-suggestions-2017/>.

and professional contexts, without any exemption, based on the principle of equal opportunities for all. It also urges the State party to adopt a legal definition of reasonable accommodation and incorporate it into all relevant statute laws so that it can be applicable in all areas of government, including judicial and administrative areas.

11. The Committee is concerned that the systems for dealing with cases of intersectional discrimination, for example disability combined with gender or ethnicity, require more development.

12. The Committee recommends that the State party examine the appropriateness of the current structure used to deal with situations of intersectional discrimination.

Article 2 of the Constitution of Sweden prohibits discrimination on a list of different grounds, in which “functional disability” is referred.¹¹⁴ In addition, the **Swedish Discrimination Act (2008:567)** was adopted to promote equal treatment and combat discrimination, including on the ground of disability.¹¹⁵ The Act covers, among others, the areas of work and employment, education, access to good, services and housing (outside the private and family sphere), health and medical care. It includes direct and indirect discrimination, harassment and instruction to discriminate. However, the concept of reasonable accommodation has not been per se defined and included in the Discrimination Act. Multiple and intersectional forms of discrimination are not included as well.

In relation to disability, it also introduced the notion of “**inadequate accessibility**” in 2015.¹¹⁶ 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. Inadequate accessibility as a form of discrimination is permitted on the housing market, and is regulated as an exception to the prohibition of discrimination. **A general issue with the construction form of inadequate accessibility** is the complex and sometimes unduly difficult test of reasonableness regarding which measures can be demanded. Up until May 2018, providers of goods and services with less than ten employees were exempt from the prohibition against discrimination in the form of inadequate accessibility. If a provider is renting its facilities, the owner of the facility is not covered by the law.

The **Equality Ombudsman** has the task to supervise compliance with the Discrimination Act. It also 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 civil society. There are cases when a DPO brought a lawsuit, the court found unlawful discrimination and awarded compensation in contravention to the assessment of the Ombudsman.

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¹¹⁴ See article 2 of the Constitution of Sweden. English text available here:

<http://www.parliament.se/library/sahmanadruytunnet/Sweden.pdf>.

¹¹⁵ Text in English available here: https://www.government.se/4a788f/contentassets/6732121a2cb54ee3b21da9c628b6bdc7/oversattning-diskrimineringslagen_eng.pdf.

¹¹⁶ 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.”

Recommendations of the CRPD Committee (CRPD/C/GBR/CO/1) – 2017

14. The Committee is concerned that the State party's anti-discrimination legislation does not provide comprehensive and appropriate protection, particularly against multiple and intersectional discrimination, including in access to housing. It is also concerned about the low level of redress in rulings adopted by the judiciary when adjudicating cases of discrimination against persons with disabilities.

15. The Committee recommends that the State party, in line with Goal 10 and targets 10.2 and 10.3 of the Sustainable Development Goals, explicitly incorporate in its national legislation protection from multiple and intersectional discrimination on the basis of gender, age, race, disability, migrant, refugee and/or other status, and provide appropriate compensation and redress for victims, and sanctions proportional with the severity of the violation.

16. The Committee is concerned that the duty to make reasonable adjustments to the common parts of residential properties in the Equality Act 2010 is not yet in force, and that persons with disabilities living in Northern Ireland are not adequately protected against direct and indirect disability-based discrimination and against discrimination by association.

17. The Committee recommends that the State party:

(a) Bring its anti-discrimination legislation into accordance with the Convention and speed up the process to bring into force all legislative provisions in the Equality Act 2010, including those concerning reasonable accommodation in the housing sector;

(b) Take the necessary measures through the appropriate authorities, once the Northern Ireland government is in place, to ensure that the Northern Ireland Executive reform on disability rights law reflects the recommendations made by the Equality Commission for Northern Ireland in its 2012 Strengthening Protection for Disabled People report to protect persons with disabilities in Northern Ireland from direct and indirect disability-based discrimination and discrimination through association.

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.¹¹⁷ 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**.¹¹⁸ 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.¹¹⁹ 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.¹²⁰ For instance, organisations of

¹¹⁷ 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.

¹¹⁸ 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.

¹¹⁹ See under sections 20-22 and 189 of the Equality Act 2010.

¹²⁰ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on the United Kingdom (2017), paragraph 16.

persons with disabilities reported that schools are not under a statutory duty to make reasonable adjustments in relation to physical features.¹²¹

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.¹²²

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.

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¹²¹ 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.

¹²² 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>.

Chapter 5- European Union law on equality and non-discrimination

5.1. Principles of equality and non-discrimination in the European Union

The principles of equality and non-discrimination are enshrined in the treaties of the European Union. In practice, the EU has two main obligations:

- to ensure non-discrimination on the ground of disability in the EU's own institutions, bodies, offices and agencies, in their respective activities (article 21 of the Charter of Fundamental Rights of the European Union);¹²³ and,
- to combat discrimination through the development and implementation of policies and activities in the EU (articles 10 and 19 of the Treaty on the Functioning of the EU).¹²⁴

To ensure that fundamental rights are respected by the EU itself, the European Ombudsman is mandated to deal with cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union.¹²⁵ For instance, the Ombudsman may deal with issues of discrimination on the ground of disability brought by students with disabilities in European schools, or workers with disabilities in the European Commission.¹²⁶

In addition, the EU can adopt specific legislation to combat discrimination and harmonise prohibition of discrimination in all EU Member States, thus potentially protecting millions of Europeans against discriminatory practices taking place at national level.

5.2. Overview of EU law: harmonising non-discrimination between EU Member States

5.2.1. EU anti-discrimination framework

The EU has adopted several EU directives to combat discrimination on the grounds of race, ethnic origin¹²⁷ and gender¹²⁸ in a broad range of fields, such as employment, social protection and and benefits or compensation for social disadvantages, education and goods and services available to the public, including housing and health care.

¹²³ Charter of Fundamental Rights of the European Union, Official Journal C 326/391 (available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>).

¹²⁴ This is a provision of general application for all the competences that are conferred to the EU by the Member States.

¹²⁵ Article 43 of the Charter of Fundamental Rights of the European Union.

¹²⁶ More information on the European Ombudsman is available in all EU language and in Easy to read on the Ombudsman's official website.¹²⁶

¹²⁷ Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L180/22 (available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0043>).

¹²⁸ Directive 2006/54/EC of 2 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, OJ L 204/23 (available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006L0054>) and Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L373/37 (available at <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32004L0113>).

However, **only the Employment Equality Directive adopted in 2000 currently prohibits discrimination based on disability, and solely in the field of employment and vocational training.**¹²⁹ This directive, which also covers the grounds of age, religion or belief and sexual orientation was a very positive step. It specifically obliges employers to provide reasonable accommodation for employees with disabilities. This provision on mandatory accommodation at work is central in ensuring the equal right to work and employment of persons with disabilities.

The adoption of anti-discrimination directives initiated a movement throughout the EU and its Member States towards the adoption of national non-discrimination legislation transposing the directives. Many EU Member States go much further than the sole EU Employment Equality Directive in protecting persons with disabilities from discrimination,¹³⁰ usually extending the protection to other areas of life.

5.2.2. Proposal of a horizontal equal treatment directive

In 2008, the European Commission proposed a directive¹³¹ that, once adopted, could harmonise the protection against discrimination in various fields of life in the EU. This so-called “horizontal equal treatment directive” aims to protect persons with disabilities who are discriminated against due to their age, sexual orientation and religion or belief, beyond the field of employment. The proposal includes, to the extent of the EU’s competences, the areas of:

- social protection, including social security and healthcare;
- social advantages;
- education;
- access to and supply of goods and services which are available to the public, including housing.

The Commission’s proposal is supported by the European Parliament and civil society, but is **blocked since 2008 by the Council of the European Union**, which represents the Member States of the European Union. For the past decade, the Council has not been able to agree on the text.

During the review of the EU by the CRPD Committee – as party of the UN Convention on the Rights of Persons with Disabilities – the experts of the Committee specifically recommended that the EU should now adopt the proposed horizontal directive on equal treatment, and make sure that discrimination on the ground of disability is prohibited in all its aspects:

Recommendations regarding equality and non-discrimination (article 5 UN CRPD)

18. The Committee is concerned that Council directives 2000/43,* 2004/113** and 2006/54*** fail to explicitly prohibit discrimination on the grounds of disability and to provide reasonable accommodation to persons with disabilities in the areas of social protection, health care, (re)habilitation, education and the provision of goods and services, such as housing, transport and insurance.

¹²⁹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Official Journal L 303 , 02/12/2000 P. 0016 – 0022 (available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0078>).

¹³⁰ More details can be found in section 3 of this report.

¹³¹ Proposal of 2 July 2008 for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM/2008/0426 final (available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008PC0426>).

19. The Committee recommends that the European Union adopts its proposed horizontal directive on equal treatment, extending protection against discrimination to persons with disabilities, including by the provision of reasonable accommodation in all areas of competence. The Committee also recommends that the European Union ensure that discrimination in all aspects on the grounds of disability is prohibited, including multiple and intersectional discrimination.

* Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

** Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services

*** Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation

5.3. Gaps in EU law: how to ensure better protection against discrimination on the ground of disability

An ambitious harmonisation of EU and national legislations is needed to fully and extensively protect persons with disabilities from discrimination.

5.3.1. Ensuring consistency in protection against discrimination

In Chapter 3, we observed that, even though some Member States developed comprehensive anti-discrimination legal framework, there are still different levels of protection in the European Union. While discrimination based on gender and race are comprehensively addressed in specific directives transposed at the national level, discrimination based on disability has not been given the same protection.

If the European Union wants to live up to the principles of equality and non-discrimination, persons falling under all grounds of discrimination enshrined in the Charter of Fundamental Rights of the European Union should be granted the same protection in EU law.

5.3.2 Full compliance with the UN Convention on the Rights of Persons with Disabilities

In the light of the full ratification of the UN Convention on the Rights of Persons with Disabilities by the EU and all its Member States since March 2018, and the 2015 recommendations of the CRPD Committee to the EU (see above), it is very important that the European Union finally adopts a comprehensive equal treatment directive that would comprehensively prohibit discrimination on the ground of disability in all areas of life.

Such horizontal directive must be **fully compliant** with the CRPD, in particular article 2 on definitions, article 5 on equality and non-discrimination, and General Comment No. 6 on equality and non-discrimination (see Chapter 2). It must address all forms of discrimination, including multiple and intersectional forms, discrimination by association and the denial of reasonable accommodation, with a particular emphasis on the definition of reasonable accommodation.

Any references to accessibility in EU legislation must be in line with article 9 of the CRPD. This means that accessibility requirements cannot be limited by a proportionality test. The CRPD Committee

stressed that “accessibility duties relate to groups and must be **implemented gradually but unconditionally**.”¹³²

5.3.3 Consultation and participation of persons with disabilities and their representative organisations

Both at the EU and national levels, **legislation prohibiting discrimination on the ground of disability and non-discrimination policies must be designed and implemented with the meaningful consultation and participation of persons with disabilities and their organisations** representing the diverse range of persons with disabilities. As highlighted by the CRPD Committee, their participation in awareness-raising and capacity building at the national level is also important “for establishing a culture of tolerance and diversity, which is the bedrock for anti-discrimination law and policy.”¹³³

In August 2018, EDF requested access to the latest version of the proposed horizontal equal treatment directive as discussed by the Council, to the General Secretariat of the Council and the Commission. The request was refused on the ground that “disclosure of the document at this stage would seriously undermine the decision-making process of the Council.” EDF has not been consulted in any stages of the negotiation.

¹³² CRPD Committee, General Comment No. 6, paragraphs 40-42.

¹³³ CRPD Committee, General Comment No. 7, paragraph 73(f).

Conclusion

At the national level:

At the EU level:

Recommendations

- 1) The EU should harmonize the equality standards. All persons with disabilities should be protected against all forms of discrimination (direct, indirect discrimination, denial of reasonable accommodation, harassment, multiple and intersectional discrimination) in all areas of life (beyond employment) at EU and national level, in line with article 5 CRPD and General Comment No. 6 of the CRPD Committee.
- 2) EU Member States should prohibit discrimination on the ground of disability in all areas of life. The obligation to provide reasonable accommodation should be included in all national legal frameworks on equal treatment, and the denial of reasonable accommodation should be recognised as a form of discrimination, in line with article 5 CRPD.
- 3) General awareness raising on equality and the rights of persons with disabilities should be provided, and in particular training on the concept of reasonable accommodation.
- 4) Legal aid, remedies and compensation should be available for persons with disabilities who are victims of discrimination. Representative organisations of persons with disabilities should have the necessary legal standing, resources and capacity to support persons with disabilities in finding redress. Equality bodies should receive the mandate and resources to inform and assist individuals in their discrimination.