



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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Particular thanks to EDF Human Rights and Non-Discrimination Committee, EDF Board, EDF Youth Committee, EDF Women's Committee, EDF Members, the European Network of Equality Bodies and its members, AGE Platform, the European Network Against Racism, ILGA-Europe, and the Youth Forum, who generously provided further insight and feedback contributing to the strength of this report. We also want to thank Mrs Theresia Degener, former Chair of the CRPD Committee, for contributing the introduction to this report.



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Funded by
the European Union

This report was co-funded by the European Union's Rights, Equality and Citizenship Programme. The European Union was not involved in the preparation and publication of this report. The European Disability Forum recognises that the opinions expressed do not necessarily reflect the position of the European Union.

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European Disability Forum's series of Human Rights Reports

The European Disability Forum (EDF) is an independent organisation of persons with disabilities representing the interests of more than 80 million persons with disabilities in Europe. EDF is publishing a series of Human Rights 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 the EDF series of Human Rights Reports focused on the United Convention on the Rights of Persons with Disabilities (CRPD), marking its 10th anniversary and providing an overview of the commitment to the CRPD in Europe. The second issue gave an overview of the state of play on the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs) in Europe and the associations with implementation of 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-feph.org/other-publications>.

The purpose of this series of reports 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 national and European levels. For example, the first EDF Human Rights Report demonstrated 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 Convention.

This new issue on ensuring the rights of persons with disabilities to equality and non-discrimination in the European Union comes at a significant time. 2018 marked the universal ratification of the CRPD in the European Union - it is now ratified by the EU and all its Member States - and the adoption by the 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 anniversary of the European Commission's proposal for an 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 EU and 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 influence our work on equality and the Horizontal Equal Treatment Directive.

The Human Rights and Non-Discrimination Committee of EDF guided the development of this report from its inception to its completion. This Committee is composed of its Chair, Klaus Lachwitz, and members of the EDF board who are experts on the human rights of persons with disabilities in Europe. The report is the culmination of desk research and a systematic review and analysis of European and national anti-discrimination legislation and its implementation, as well as the Concluding Observations adopted by the CRPD Committee and its General Comment No. 5. National members of the European Disability Forum and the European Network of Equality Bodies were consulted and provided extensive information and comments. In order to research areas of intersectional discrimination, we cooperated with anti-discrimination networks. We also sought expert input from Equinet and the CRPD Committee, who kindly provided introductory statements.

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 by adopting 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 that 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 national level. It means that it is up to the individual countries to decide on the basis of their own laws how to reach these goals.

Equality body: independent organisation in charge of promoting equality, assisting victims of discrimination, and monitoring and reporting on equality issues. Their exact mandate varies from one country to another.

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 that 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, with the planned exit of the United Kingdom.

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 their 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 of their human rights and fundamental freedoms on an equal basis with others. 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 that 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

President of the European Disability Forum

I am very pleased to introduce the third issue in our series of Human Rights Reports by the European Disability Forum (EDF).

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 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 grounds of disability in the EU. Progress began almost two decades ago with the adoption of the 2000 Employment Equality Directive prohibiting discrimination at the workplace and in vocational training. The 2008 Commission proposal of a horizontal equal treatment directive, regrettably did not lead to harmonisation in all countries of the EU in relation to protection against discrimination in all fields of life, because Member States of the EU are still blocking the adoption of the Commission's proposal. 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 in Europe.

EDF will not wait another decade to act and call for action. Discrimination, exclusion and poverty remains endemic among those with disabilities, and therefore we will continue to analyse such important issues in our human rights reports and strongly advocate with our members at national and EU levels.

I hope you find this report informative.

Yannis Vardakastanis

EDF President



Chair of the European Network of Equality Bodies

In 2010, the European Union ratified the UN Convention on the Rights of Persons with Disabilities (the Convention), committing to ensure equality and non-discrimination of people with disabilities through the adoption of new legislation and policies, but also by reviewing existing mechanisms. All 28 EU Member States have ratified the Convention. Furthermore, full equality for persons with disabilities is firmly embedded in the European Union, with Article 26 of the Charter of Fundamental Rights of the European Union (the Charter) stating that “the Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community”.



Photo by Thierry Maroit

While the EU has signed up to the task of guaranteeing equal rights to persons with disabilities by agreeing to the Convention and solemnly proclaiming the Charter, there remains a great deal of work to be done at European level to ensure adequate legal measures for protecting the rights of disabled persons in Europe are put in place. Thus far, the Framework Employment Directive 2000/78/EC, covering the fields of employment and vocational training, remains the only EU equal treatment legislative act guaranteeing non-discrimination and promoting equality for persons with disabilities. This means that the rights of disabled persons remain unprotected in education, housing, social protection and healthcare, as well as access to goods and services, and the European Union falls short of fully realising its international obligations under the Convention and the Charter.

In 2008, the European Commission proposed a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation. Known as the Horizontal Directive, it was to bridge gaps in existing legislation and prohibit discrimination in all fields of life outside of employment and vocational training. It has been ten years since the proposal was put forward, yet adoption by the Council of the European Union, composed of representatives of governments of EU Member States, has yet to become a reality.

Despite the absence of a comprehensive non-discrimination framework at EU level, many Member States have upgraded national policies and legislation to meet the standards set by the Convention and the Charter. Under Article 5 - Equality and non-discrimination - State Parties to the Convention are obliged to prohibit discrimination based on disability, guarantee equal and effective legal protection against discrimination on all grounds, ensure reasonable accommodation, and allow specific measures necessary to accelerate or achieve de facto equality for persons with disabilities. General Comment 6 by the Committee on the Rights of Persons with Disabilities clarifies these obligations, and recommends State Parties to develop inclusive and accessible equality policies and strategies in close consultation with national equality bodies, among other organisations, to ensure the full implementation of Article 5.

Equality bodies therefore play a crucial role in protecting the right to non-discrimination and promoting equality for persons with disabilities at national level. Currently, 34 equality bodies, members of the Equinet network have a mandate on addressing the rights of persons with disabilities in the area of employment and beyond, while many of them also have a mandate on monitoring the implementation of the Convention at national level. Equinet provides support through capacity building, sharing of expertise and communicating the experience and learning of equality bodies to inform European policy and legislative development.

As the European Network of National Equality Bodies, Equinet stands together with persons with disabilities to fight for equality for everyone in Europe. While there is still a great deal to be accomplished, we believe that the upcoming European Elections and the adoption of the Union's post-2020 Multiannual Financial Framework (MFF) provide Europe with a unique opportunity to reinvigorate the promotion of full equality for persons with disabilities. We therefore call on the EU to adopt a more ambitious European Disability Strategy after 2020 to achieve meaningful change for disabled citizens. This political commitment should of course be supported by strong financial means. We hope the post-2020 MFF will reflect the EU's human rights approach to disability, ensuring that full inclusion and independent living are achieved and that no part of the Union budget is used for reinforcing discrimination, segregation and exclusion of disabled persons in Europe.

The European Disability Forum, representing the interests of around 80 million persons with disabilities in Europe, is a crucial partner and strong ally of Equinet and equality bodies in the fight for equality for all in Europe. We are therefore honoured to contribute to this year's Human Rights Report on equality and non-discrimination, and look forward to further fruitful cooperation in the years to come.

Tena Šimonović Einwalter

Chair of the European Network of Equality Bodies

Chair of the UN Committee on the Rights of Persons with Disabilities (2017-2018)

The third EDF Human Rights Report focuses on one of the most fundamental human rights: the right to equality and non-discrimination as enshrined in Article 5 CRPD. The CRPD Committee has addressed this right in almost all its Concluding Observations on State Parties' reports and has devoted a specific General Comment - General Comment No. 6 of 2018 - to it.

In this General Comment, the Committee has interpreted article 5 of the CRPD in order to guide States Parties to better implement this article.

The Committee has further elaborated on the **human rights model of disability** as an improvement of the social model of disability. We all know that we have to replace the medical model of disability which reduces disabled people to their impairments. But only experts know that the CRPD goes beyond the social model of disability because only the human rights model of disability can explain why legal capacity must not be denied or restricted on the basis of impairment. Only the human rights model encompasses both sets of human rights: civil and political as well as economic, social and cultural rights. It further recognises that disability is only one layer of identity and disability-based discrimination often comes with intersectional discrimination, that disability-discrimination cannot be combated without poverty eradication, and disability prevention may be stigmatizing and discriminatory.

The General Comment No 6 of the CRPD Committee also introduces a new model of equality to modern equality theory: **inclusive equality!** This new model of equality goes beyond formal equality and substantive equality. It recognises that all human beings, whether disabled or not, need to be recognised and empowered in order to be free from (1) socio- economic disadvantages, (2) stigma, stereotyping, prejudice and violence, (3) exclusion as members of a social group and (4) obligations to assimilate and deny their difference as a matter of human dignity.

The human rights model of disability and the concept of inclusive equality are important contributions to modern human rights law. But all important theory has to be applied in practice in order to make a difference in the life of each individual. The third EDF Human Rights Report offers such a practical application. I hope it will serve as a useful guide in realising non-discrimination and equality within the EU. The Committee congratulates the EU and its Member States for their universal ratification of the Convention.

Theresa Degener

Chair of the UN Committee on the Rights of Persons with Disabilities (2017-2018)



Photo by Mariana Cook

Summary

The European Union in its treaties and its anti-discrimination legislation has shown its commitment to protect Europeans against discrimination; but not all Europeans are protected equally. Despite the ratification of the CRPD by the EU and all of its Member States, persons with disabilities still lack comprehensive protection against discrimination in Europe; where protection is provided in law, enforcement is lagging behind. In April 2018, the CRPD Committee in its General Comment No. 7 on equality and non-discrimination promoted the human rights model of disability and inclusive equality as ways, among others, to recognise the dignity of human beings and their intersectionality, ensure fairness and combat stigma, prejudice and violence. This General Comment gives us a clear idea of how to ensure comprehensive protection for persons with disabilities against discrimination.

This report takes a systematic look at equality and non-discrimination for persons with disabilities in Europe and points to how we can address the gaps which still exist.

The report aims to inform organisations of persons with disabilities and policy-makers of the current state of protection against discrimination based on disability in the European Union and draws recommendations with the goal of reaching inclusive equality for all persons with disabilities. The **first chapter** provides background information about the UN Convention on the Rights of Persons with Disabilities. **Chapter 2** describes what constitutes discrimination on the grounds of disability and the obligations of States under international human rights law. **Chapter 3** focuses on multiple and intersectional discrimination, by examining the effect of the intersection of disability with other grounds of discrimination. Looking at current practice, **Chapter 4** describes the state of play at national level, with **Chapter 5** looking at the EU level, specifically considering the current gaps in ensuring better protection against discrimination based on disability. Finally, the report draws **conclusions and recommendations** addressed to the EU and its Member States.

The analysis of the legal framework in twenty countries shows that, since the adoption of the CRPD progress has been made, but many gaps still exist and need to be addressed.

Most of the EU Member States go over and above their obligations under EU law and prohibit discrimination on the grounds of disability beyond the area of employment. However, they often do not fully understand, and include in their law, the concept of reasonable accommodation and its denial as a form of discrimination on the grounds of disability. They also often do not recognise and address discrimination by association and multiple and intersectional forms of discrimination. Furthermore, laws discriminating against persons with disabilities, for instance by authorising the limitation or removal of their legal capacity, and promoting segregated education and employment, are still in force in many countries.

The EU failed to adopt anti-discrimination provisions that would prohibit discrimination based on disability in all areas of life, despite the Commission's proposal of a horizontal equal treatment directive, now blocked by the Council since 2008. This report explains why such broadly reaching legislation is necessary to harmonise and ensure protection against discrimination in the EU.

The 2030 agenda for Sustainable Development and the Sustainable Development goals marked a global recognition of the importance of leaving no-one behind; it is essential to ensure that those left behind are included fully and protected from discrimination if the global framework is to be fulfilled.

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

The CRPD is an international human rights treaty reaffirming that persons with disabilities 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 in 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 the 13th of December 2006 by consensus of the General Assembly of the United Nations (UN). On the 30th of March 2007, the CRPD was opened for signature at the UN Headquarters in New York. On publication of this report, 177 countries worldwide (91% of UN Member States) 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 there has been 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) have ratified the CRPD, as well as all European Economic Area/European Free Trade Association (EEA/EFTA), except **Liechtenstein**. The European microstates of Andorra, San Marino and Monaco have also ratified.

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

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

Map on the ratification of the CRPD in Europe



The worldwide map of ratification is available on the webpage of the United Nations:
<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 in many articles of the CRPD. The most important ones are Article 2 - which outlines 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.

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

- **Multiple discrimination:** situation where a person can experience discrimination on two or more 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; 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.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 sterilisation 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 a fear by 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 concerned persons with disabilities. 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

² General Comment No. 6, paragraph 19.

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.

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 adjusting measures 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 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:** 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

Example: Discrimination in the field of employment

In the EU, according to data relating to 2013, only about 47% of persons with disabilities were employed compared to 72% of other persons.¹¹ Discrimination on the grounds of disability in the field of work and employment is one of the most reported forms of discrimination. Employment barriers typically faced by persons with disabilities are inaccessible work spaces, inaccessible working materials and technology, difficulty in commuting to their work place, lack of flexibility regarding scheduling and the work environment, lack of understanding of disability by their employers or co-workers, discrimination by potential employers and misconceptions about their ability to do their jobs. Even when persons with disabilities find employment, they are often restricted in their choice of where they work, or are underemployed. Persons with disabilities are more likely than others to work in part-time jobs or have different working contracts, including low paid sheltered work.

To combat discrimination in the field of employment and to ensure full inclusion of persons with disabilities in the labour market, the provision of reasonable accommodation by employers, including potential employers, is crucial.

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

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

¹¹ <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1569&context=gladnetcollect>.

2.2 What are the States Parties' obligations?

Under Article 5 of the Convention, States Parties have an 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 forms of discrimination on the basis of disability and guarantee that persons with disabilities have 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, this means that States Parties must **refrain from any action that discriminates against persons with disabilities**. The Committee explains in General Comment No. 6 that the States must modify or abolish all existing laws, regulations or 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**.¹² Consequently, 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 Parties 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.¹³

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

Example: Discrimination in the field of employment

Article 27 of the CRPD on the rights to work and employment specifically requires States to:

- a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
- b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

(...)

¹² General Comment No. 6, paragraphs 30-32.

¹³ General Comment No. 6, paragraphs 31.

- i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

Interpreting the provision of the Convention, the UN Committee on the Rights of Persons with Disabilities stressed that States Parties should facilitate the transition away from segregated work environments and ensure that persons with disabilities are paid no less than the minimum wage and do not lose the benefit of disability allowances when they start working.¹⁴ It recommended that States adopt affirmative action measures, and incentives to increase the employment of persons with disabilities in the public and private sectors, for instance, through the adoption of quota systems with effective mechanism and sanctions for non-compliance. Finally, it also stressed that persons with disabilities must be protected, on an equal basis with others, from forced and compulsory labour, and from exploitation and harassment in the workplace.

2.3 Equality and the 2030 Agenda on Sustainable Development

Ensuring equality and non-discrimination is also crucial to achieve the sustainable development goals (SDGs) of the 2030 Agenda on Sustainable Development,¹⁵ in which States particularly committed to:

- guarantee equal and accessible education by building inclusive learning environments and providing the assistance required for persons with disabilities (Goal 4: Quality Education),
- promote inclusive economic growth, full and productive employment allowing persons with disabilities to fully access the job market (Goal 8: Decent work and economic growth),
- reduce inequality, with a specific emphasis on the social, economic and political inclusion of persons with disabilities (Goal 10: Reduced inequalities), and,
- create accessible cities and water resources, affordable, accessible and sustainable transport systems, providing universal access to safe, inclusive, accessible and green public spaces (Goal 11: Sustainable cities and communities).

¹⁴ General Comment No. 6 of the CRPD Committee.

¹⁵ The 2030 Agenda for Sustainable Development is enshrined in Resolution 70/1, unanimously adopted by the United Nations General Assembly in September 2015. It sets out 17 Sustainable Development Goals which aim to mobilise global efforts to end poverty, foster peace, safeguard the rights and dignity of all people and protect the planet. Persons with disabilities are mentioned 19 times in the SDGs: are once in the introduction, seven times in targets and 11 times in the indicators.



Goal 10: Reduce inequality within and among countries

Target 10.2 - By 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion, economic or other status.

Target 10.3 - Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard.

The CRPD Committee recommended that States Parties take into account Article 5 of the Convention while implementing targets 10.2 and 10.3 of the SDGs and be guided by article 5 of the Convention in its efforts to achieve these targets.

More information on the SDGs is available in the EDF Human Rights Report on “The 2030 Agenda and the Sustainable Development Goals: A European perspective to respect, protect and fulfil the United Convention on the Rights of Persons with Disabilities”.¹⁶

¹⁶ Available here: <http://www.edf-feph.org/other-publications>.

Chapter 3. Multiple and intersectional forms of discrimination

To fully address discrimination on the grounds 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 recognises 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 multiple 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). The lack of protection, especially at EU level, means that there is little incentive for public authorities to address discrimination faced by people with intersectional identities.

This chapter provides examples of 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 specific provision on women and girls with disabilities.

Article 6 of the CRPD requires States Parties to the Convention to “recognise 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, women and girls with disabilities are affected not only by multiple discrimination, but also by intersectional discrimination and require specific targeted measures.¹⁷

¹⁷ UN CRPD Committee, General Comment No. 3 on women and girls with disabilities (2016), paras 4, 10 and 16.

“Although progress has been made in society, discrimination against women and girls still exists at the present time, perhaps even in much more subtle ways. Women and girls with disabilities are still to be found on the fringes of all human rights movements and remain bogged down in a disadvantageous position within society. The status of women and girls with disabilities is not only worse than that of other women and girls, but also worse than that of their male peers, and especially so in rural areas, where matriarchal systems and primary economic systems, with fewer services and opportunities for this group than in urban environments, are still predominant.” - Ana Pelaez, member of the UN Committee on Elimination of Discrimination Against Women, and Chair of EDF’s Women Committee

In practice, women and girls with disabilities face barriers in most areas of life and are still treated unequally and denied their human rights, which constitutes aggravated forms of discrimination on the grounds of their disability and gender. Women and girls with intellectual and/or psychosocial disabilities, deafblind women, and women with multiple disabilities are even more at risk of being marginalised and abused,¹⁸ and face more challenges to report abuses and seek justice.

In reality, prejudices and lack of support measures hinder their access to education, employment and their participation in society at large, including political participation, in comparison with other women and girls, and men with or without disabilities. Health care facilities that may appear neutral continue to be discriminatory when they do not include accessible examination beds for gynaecological screenings, sign language interpretation for deaf women or easy to understand information for expectant mothers with intellectual disabilities. Violence and abuse in the form of forced sterilisation, female genital mutilation and coerced abortion are other clear examples of the denial of rights that many women, adolescents and girls with disabilities suffer from, without giving their consent or fully understanding the intentions,¹⁹ in particular relating to women and girls with disabilities placed in institutional settings.²⁰ Their testimonies may even be dismissed by the police or in court proceedings because of the removal of legal capacity or “lack of credibility”, thus denying their rights of access to justice and effective remedies.

All these acts and practices constitute serious violations of their fundamental rights and should be condemned and effectively sanctioned. The ratification by the EU and all its Member States of the [Council of Europe Convention on preventing and combating violence against women and domestic violence](#) (“Istanbul Convention”)²¹ is particularly required.

¹⁸ For instance, in the Netherlands violence and abuse of women with intellectual disabilities in institution is four times higher than of the general population. See Inclusion Europe’s report on “Life after violence”, page 82, available here: https://inclusion-europe.eu/wp-content/uploads/2018/11/LAV-Publication_web.pdf.

¹⁹ European Disability Forum, 2nd Manifesto on women & girls with disabilities. See also, UNHCHR, Thematic study on the issue of violence against women and girls and disability, Report of the Office of the United Nations Commissioner for Human Rights, UN Doc. A/HRC.20/5, 30 March 2012.

²⁰ More information on violence against women with intellectual disabilities in institutions is available in the report of Inclusion Europe on Life after violence (2018), available here: https://inclusion-europe.eu/wp-content/uploads/2018/11/LAV-Publication_web.pdf.

²¹ More information about the Istanbul Convention is available on the website of the Council of Europe, here: <https://www.coe.int/en/web/istanbul-convention/>.

3.2 Age and disability

Children with disabilities

Article 7 of the CRPD specifically addressed the situation of children with disabilities. States Parties of the Convention are obliged to “ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that right”. Article 24 of the CRPD further stresses the principle of equal opportunity and non-discrimination in the field of education, and requires States Parties to ensure “that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability”.

Yet, in practice the rights and views of children with disabilities are rarely considered. Common areas of discrimination that children with disabilities disproportionality and extensively face include segregated education, bullying, violence, including sexual violence, and institutionalisation. Despite legal progress, segregated education is still widespread in Europe, with huge variation between countries.²²

Example: Segregated education of children with disabilities in Belgium

Belgium is the least inclusive country of the EU in terms of education of children with disabilities. In both the 2014 and 2016 dataset cross-country reports of the European Agency for Special Needs and Inclusive Education, Belgium appears as the EU country with the most segregated education for children with disabilities.²³

In a court case from the 7th November 2018, the Tribunal of Antwerp finally recognised that the non-provision of reasonable accommodation for inclusive education was a form of discrimination.²⁴ The case concerned a child with down syndrome whose school rejected him based on the fact that no teacher wanted to welcome him into their class. In a landmark judgement, the Belgian court recognised that it was a form of discrimination and stated that the refusal to accept the child amounts to refusing to provide reasonable accommodation. Indeed, no efforts had been made to provide reasonable accommodation. This judgement confirmed that inclusive education must be a priority to ensure the equal rights of children with disabilities.

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 young persons with disabilities are among the most marginalised of all young people, facing stigma

²² European Agency Statistics on Inclusive Education, 2016 Dataset Cross-Country Report of the European Agency for Special Needs and Inclusive Education, available here: <https://www.european-agency.org/resources/publications/european-agency-statistics-inclusive-education-2016-dataset-cross-country>.

²³ See 2014 and 2016 Dataset Cross-Country Reports of the European Agency for Special Needs and Inclusive Education.

²⁴ More information is available in French here: <https://www.unia.be/fr/articles/le-premier-jugement-qui-reconnait-enfin-lecole-inclusive-1>.

and barriers in their access to education, employment, health care and social services.²⁵

EDF youth committee members particularly referred to the area of work and employment, where young persons with disabilities face many 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 faces 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 in 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 against 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, 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.” - Matthieu Chatelain, member of EDF Youth Committee

As with many adults with intellectual and/or psychosocial disabilities, adolescents with these disabilities are very often discriminated against in many parts of Europe by limiting their working capacities to so-called sheltered work in segregated workshops and by denying their right to exercise legal capacity as it is guaranteed in Article 12 of the CRPD.

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 by the European Youth Forum on multiple discrimination and young people in Europe, disability was reported as one of the reasons leading to young people being isolated, due to a lack of adequate support measures, notably in the education system.²⁶ In an 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 exams and dropping out.²⁷ At an age when young people feel they might not been taken seriously or be seen as “exaggerating,” young people with disabilities, especially with psychosocial disabilities, face even more stigma.

²⁵ 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>.

²⁶ 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>.

²⁷ Ibid.

Older persons with disabilities

Older persons with disabilities frequently face discrimination on the grounds of age and disability, in law and in practice. The United Nations Expert Group Meeting on Supporting Autonomy and Independency of Older Persons with Disabilities noted that “older persons with disabilities face exclusion, multiple and intersectional discrimination that lead to human rights violations, such as the deprivation of legal capacity and institutionalisation”.²⁸

In many countries, age also impacts negatively on 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.²⁹

“Older persons with disabilities are also usually excluded from receiving disability benefits owing to their age, yet pensions and other available benefits may not fully address disability-related needs.” - United Nations Special Rapporteur on the Rights of Persons with Disabilities³⁰

“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.” - United Nations Independent Expert on the enjoyment of all human rights by older persons³¹

Discriminatory schemes that put upper age limits on disability allowance and benefits are found, among other countries, in Ireland, France, Spain (Catalonia) and Sweden. AGE Platform Europe reported that at least eight EU countries do not offer personal assistance in old age.³²

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 who could not walk did not qualify to apply for the allowance granted to make private transport arrangements, unless they were already receiving the allowance before their 66th birthday.

²⁸ UN Expert Group Meeting on Supporting Autonomy and Independency of Older Persons with Disabilities (25-26 October 2017), Summary Note, page 6.

²⁹ AGE Platform Europe, Draft Outline of General Comment on Article 5 Equality & Non-Discrimination (2017), available here: https://www.age-platform.eu/sites/default/files/AGE_input_Draft_GCArt5_CRPD.pdf.

³⁰ UN Special Rapporteur on the Rights of Persons with Disabilities, report on the right of persons with disabilities to social protection, paragraph 60.

³¹ Report of the Independent Expert on the enjoyment of all human rights by older persons (July 2017).

³² AGE Platform Europe, Draft Outline of General Comment on Article 5 Equality & Non-Discrimination (2017), available here: https://www.age-platform.eu/sites/default/files/AGE_input_Draft_GCArt5_CRPD.pdf, referring to the European Network of Independent Living's report on personal assistance, available here: <http://www.enil.eu/wp-content/uploads/2012/06/Personal-Assistance-Service-in-Europe-Report-2015.pdf>.

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 2000.³³ She recommended that the Department of Health complete the review of the Mobility Allowance and revise it to render it compliant with the Equal Status Act 2000.

As a consequence of the Ombudsman's report, the Irish government closed the Mobility Allowance Scheme to new applicants in 2013.³⁴ An alternative scheme called "Transport Support Scheme" is being devised to replace it.³⁵

Addressing ageism is fundamental in ensuring the rights of all people. It is important to tackle multiple and intersectional forms of discrimination faced by older persons with disabilities in all its forms to ensure their full participation in society and community life. The United Nations Expert Group Meeting on Supporting Autonomy and Independence of Older Persons with Disabilities stressed that "despite higher rates of disability in older persons, little or no attention is given to their particular situation". It is thus crucial that States include a perspective of disability with aging, or aging with disability, in their legislation and public policies.³⁶

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. This is particularly true in the areas of employment, education³⁷ 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 programmes. Trans-people 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 the multiple barriers they face trying to obtain employment, including both disability and gender identity discrimination.³⁸

*"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 colour³⁹*

³³ 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>.

³⁴ 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/>.

³⁵ Read more on Citizens Information Ireland: http://www.citizensinformation.ie/en/travel_and_recreation/transport_and_disability/mobility_allowance.html.

³⁶ UN Expert Group Meeting on Supporting Autonomy and Independency of Older Persons with Disabilities (25-26 October 2017), Summary Note, pages 2 and 6.

³⁷ 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.

³⁸ Transgender Europe, Oppression Squared: D/deaf and disabled trans experiences in Europe, page 53.

³⁹ Transgender Europe, Oppression Squared: D/deaf and disabled trans experiences in Europe, page 37.

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 the charity **BRAP**, formerly known as 'Birmingham Race Action Partnership'⁴⁰, 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.⁴¹ 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 forcibly 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.⁴² The former psychiatrist and activist Suman Fernando has suggested that the health 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 for 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 disabilities⁴³

12. The Committee is concerned that, albeit that there exists 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. Consequently, 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 demonstrate 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.

⁴⁰ Find more information about their work at: <https://www.brap.org.uk/>.

⁴¹ BRAP, Improving mental health for BME communities: an event report, page 3, available here: https://docs.wixstatic.com/ugd/27aa99_a45774f42cb040a7a4d6e0a132559170.pdf?index=true.

⁴² 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>.

⁴³ CRPD Committee, Concluding Observations on Peru (CRPD/C/PER/CO/1).

Migrants with disabilities

Asylum seekers and migrants with disabilities are also particularly susceptible to intersectional discrimination. In the [survey “Migrants, speak up”](#) conducted by the [European Network Against Racism](#), a migrant explained that there are no set infrastructures and policies 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.”⁴⁴

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.”⁴⁵

The CRPD Committee specifically addressed the situation of refugees and asylum seekers when it reviewed 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 schemes and benefits and incorporation of disability in refugee and asylum legislation.

Example of recommendations adopted by the CRPD Committee in relation to refugees and asylum seekers with disabilities in Cyprus⁴⁶

15. The Committee is **deeply concerned about the precarious situation of refugees and asylum-seeking persons with disabilities** allowed by the State party and also notes with concern that refugee status determination procedures are not accessible. While noting the indication by 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 also notes with concern that equal access to these support schemes and benefits is not available for all refugees and asylum seekers. Furthermore, the Committee 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.

⁴⁴ ENAR, Report “Migrants, Speak Up” (2018), page 10, available here: https://www.enar-eu.org/IMG/pdf/migrant_speakup_analysis_final.pdf.

⁴⁵ Ibid.

⁴⁶ CRPD Committee, Concluding Observations on Cyprus (CRPD/C/CYP/CO/1) (2017).

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.

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 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 programmes 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”.⁴⁷

Legislation differs between the Federal level and the regions. All nine Austrian provinces/regions have their own non-discrimination laws. At a federal level, two legislations prohibit discrimination on the grounds 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 systems, social insurance, etc. There is a lack of a 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. In addition, not enough measures are adopted to ensure reasonable accommodation is provided in the public and private sectors.

⁴⁷ English translation of the Austrian Constitution available at: https://www.constituteproject.org/constitution/Austria_2009.pdf.

Equality bodies in Austria mostly have a consultative function. The **Ombudsman for People with Disabilities** provides advice for people who feel discriminated against on grounds of disability. In special cases, class actions can be brought. 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 NGOs 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

Postal address: Babenbergerstraße 5/4 A-1010, Vienna, Austria

Helpline: +43 800 80 80 16

Telephone number: +43 1 711 00 862221

Website: www.behindertenanwalt.gv.at

General email address: office@behindertenanwalt.gv.at

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

11. The Committee takes note of the anti-discrimination law which recognises 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.

The enjoyment of rights and freedom without discrimination is enshrined in article 11 of the Belgian Constitution.⁴⁸

Discrimination on the grounds of disability is prohibited at federal level in the **Anti-Discrimination Act of 10th May 2007**⁴⁹ and in the **Criminal Code**.⁵⁰ The Anti-Discrimination Act covers all forms of discrimination, including multiple discrimination and denial of reasonable accommodation in all areas of life such as access to goods and services, social protection and social benefits, and employment.

Organisations of persons with disabilities reported that current policies and programmes aimed at fighting discrimination on the grounds 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. Additionally, the concept of reasonable accommodation continues to not be understood and applied.

The **Interfederal Center for Equal Opportunities (UNIA)** is the inter-federal independent body promoting equal opportunities and rights fighting against discrimination. In 2017, it received 516 claims of discrimination on the grounds 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 in its own name, intervene before the court and address non-binding decisions or recommendations to parties of a dispute. Recently, UNIA brought a proceeding in the case of a child with down syndrome who was rejected from his school; the case was successful as the tribunal judged that the denial of provision of reasonable accommodation for inclusive education constituted a discrimination.⁵¹

⁴⁸ Text available here: http://www.senate.be/doc/const_fr.html#t1.

⁴⁹ Text available here: https://www.unia.be/files/Z_ARCHIEF/Loi%20du%2025%20fevrier%202003%20contre%20la%20discrimination_13pg.pdf.

⁵⁰ Articles 377bis, 405quater, 422quater, 438bis, 442ter, 444, 453bis, 514bis, 525bis, 532bis, 534quater of the Criminal Code.

⁵¹ More information is available here (in French): <https://www.unia.be/fr/articles/le-premier-jugement-qui-reconnait-enfin-lecole-inclusive-1>.

Belgian organisations of persons with disabilities highlight their wish that the commitment made by the federal government to upgrade the competences 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).

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Recommendations of the CRPD Committee (CRPD/C/BGR/CO/1) - 2018

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 the protection of persons with disabilities against discrimination.

The Constitution of Bulgaria does not explicitly prohibit discrimination on the grounds of disability.

The main legislation is 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 grounds 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 the 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 education⁵² and employment.⁵³ However, the concept of reasonable accommodation is not explicitly referred to and defined.

⁵² Articles 7(10) and 32 of the Law on Protection Against Discrimination, and article 17 of the Law on Integration of People with Disabilities.

⁵³ Article 16 of the Law on Protection Against Discrimination and article 24 of the Law on Integration of People with Disabilities.

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 mechanisms to ensure inclusive education, full participation in policy making and prosecution of discrimination-related violations/crimes.

The **Commission for Protection against Discrimination** (CPD) is an independent specialised body for prevention and protection against discrimination, ensuring equal opportunities and controlling the implementation and compliance of Bulgaria with international anti-discrimination norms. Between 2013 and 2017, the Commission opened proceedings in 454 cases on grounds of disability-related discrimination. Family members of persons with disabilities can also alert the Commission of abuses and be involved as plaintiffs on the merit of their relationship with the person with disabilities concerned.

The CPD has implemented an innovative three year project (2018-2020) for the certification of employers in obeying the anti-discriminatory legal rules in the work place. Subsequently, a certification process will be implemented by the CPD aiming at issuing certificates for obeying anti-discriminatory legal rules in the work place. This is a completely innovative procedure in Bulgaria, financed through EU funding.

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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Website: www.kzd-nondiscrimination.com

General email address: kzd@kzd.bg

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

7. The Committee is concerned that for entitlement to social services and benefits, distinction is made between different causes of impairments, such as war or accidents. It is also 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 are enshrined in article 14 of the Constitution of Croatia.

Discrimination based on disability is prohibited 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.⁵⁴ 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 occur 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 grounds of disability are extremely scarce. In addition, discrimination provisions are still present in law.

The central body responsible for the elimination of discrimination is the **Ombudsman**. Special laws also called for the creation of specific Ombudsmen, including an **Ombudswoman for Persons with Disabilities**. Her office acts as an equality body combating discrimination on the grounds of disability and as an independent body for monitoring the 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

Postal address: Savska cesta 41/3, 10 000 Zagreb, Croatia

Telephone number: +385 (0)1 6102170

Website: www.posi.hr

General email address: ured@posi.hr

⁵⁴ Article 4 of the Anti-Discrimination Act.

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 recognises 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 recognising 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.

Discrimination is prohibited 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)**. Discrimination based on disability, is also specifically covered by 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 stressed by the CRPD Committee in its concluding observations. 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 recognise the denial of reasonable accommodation as a form of discrimination. They explained that, in practice, the public sector is asking for compensation from persons with disabilities requesting reasonable accommodation.⁵⁵

⁵⁵ Submission of the Pancyprian Alliance for Disability in response to the List of Issues of the Committee on the Rights of Persons with Disabilities in relation to the initial report of Cyprus (February 2017), pages 8-9.

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: Office of the Commissioner for Administration and Human Rights, 1470, Nicosia, Cyprus

Telephone number: +35722405500 / 501

Website: www.ombudsman.gov.cy

General email address: ombudsman@ombudsman.gov.cy

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 labour 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 labour 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 the Czech Republic refers to equal rights in its preamble, but does not mention any specific groups or discriminatory grounds.

The **Anti-Discrimination Act** of 2009 sets the general framework for protection against discrimination, which includes discrimination based on disability.⁵⁶ 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 equal treatment. It provides legal support and assistance to victims of discrimination. It can take non-binding decisions or recommendations 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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Helpline: (+420) 542 542 888

Telephone number: (+420) 542 542 111

Website: <http://www.ochrance.cz/en/>

General email address: podatelna@ochrance.cz

⁵⁶ 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.

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 grounds 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 grounds of disability and promoting equal treatment of persons with disabilities** entered into force on the 1st of July 2018.⁵⁷ It applies to all public and private activities in all areas of society.

⁵⁷ "Lov om forbud mod forskelsbehandling på grund af handicap", text available in Danish here: <https://www.retsinformation.dk/Forms/R0710.aspx?id=201823>.

However, it does not include the concept of reasonable accommodation, nor does it prohibit the denial of reasonable accommodation as a form of discrimination on the grounds 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.

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

Contacts of the Danish Institute for Human Rights

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Telephone number: +4532698888

Website: www.humanrights.dk

General email address: info@humanrights.dk

Estonia

Paragraph 12 of the Estonian Constitution guarantees the right to equality and non-discrimination. Disability is not explicitly mentioned as a discriminatory ground, but the list of grounds is an open list.

Discrimination based on disability is covered by the **Equal Treatment Act** which prohibits direct discrimination, indirect discrimination, harassment, instructions to discriminate and victimisation.⁵⁸ The scope of application varies depending on the discriminatory ground. Prohibition of discrimination on the grounds of disability is **restricted to employment, vocational guidance and training and membership in professional organisations**.⁵⁹ The Act requires employers to provide reasonable accommodation to persons with disabilities and take appropriate measures to enable persons with disabilities to have access to and participate in employment.⁶⁰ The concept of reasonable accommodation is not explicitly defined and its denial is not explicitly recognised as a form of discrimination. However, in practice the refusal to grant reasonable accommodation is interpreted as a form of discrimination in the decisions of the Equality Commissioner.

An amendment to the Equal Treatment Act that expands the scope of prohibition of discrimination on the grounds of disability to other areas of life, such as education and access to goods and services, is currently being reviewed by the government. The amendment proposes to expand the scope for all grounds, not only disability. The Office of the Gender Equality and Equal Treatment Commissioner of Estonia reported that while there is disagreement about other grounds, there is a common understanding that the scope should be expanded at least for disability.

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.

As of January 1st 2019, the Chancellor of Justice will carry out the tasks of the independent monitoring mechanism of the CRPD.

Contacts of the Gender Equality and Equal Treatment Commissioner

Postal address: Roosikrantsi 8b, 10119 Tallinn, Estonia

Telephone number: +3726269059

Website: www.vollinik.ee

General email address: info@vollinik.ee

⁵⁸ Equal Treatment Act, paragraph 3. English translation available here:

<https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/503052017002/consolide>.

⁵⁹ Equal Treatment Act, paragraph 2.

⁶⁰ Equal Treatment Act, paragraph 11.

Finland

Section 6 of the Constitution of Finland explicitly prohibits discrimination on the grounds of disability.

A revised **Non-Discrimination Act** entered into force in 2015. It covers discrimination on the grounds of disability, including direct and indirect discrimination, harassment, denial of reasonable accommodation, as well as an instruction or order to discriminate.⁶¹ It applies to all public and private activities, excluding private life, family life and practice of religion.⁶² The obligation to promote equality applies to both public authorities and education providers, educational institutes and employers. They have a duty to adopt forms of 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 generally presents recommendations to promote equality and prevent discrimination. It can also provide assistance to victims of discrimination in pursuing their claims and can give general recommendations to prevent discrimination and promote equality.

There is also a **Non-Discrimination and Equality Tribunal** which is an impartial and independent judicial body appointed by the Government. The Tribunal supervises compliance with the Non-Discrimination Act and the Act on Equality between Women and Men (Equality Act) both in private activities and in public administrative and commercial activities. The Tribunal does not cover matters related to private life, family life or practice of religion. The function of the Tribunal is to give legal protection to those who consider they have been discriminated against or victimised. The Tribunal may prohibit continued or repeated discrimination or victimisation and impose a conditional fine to enforce compliance with its injunctions and order payment of such a fine. A decision issued by the Tribunal may be appealed against to the competent Administrative Court. The Tribunal considers petitions free of charge and there are no service fees.⁶³

Contacts of the Non-Discrimination Ombudsman

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Helpline: +358 295 666 817

Telephone number: + 358 295 666 800

Website: <https://www.syrjinta.fi/web/EN/>

General email address: yvv@oikeus.fi

⁶¹ Non-Discrimination Act, Sections 8(2) and 15.

⁶² Non-Discrimination Act, Section 2. English translation available here: <https://www.finlex.fi/en/laki/kaannokset/2014/en20141325.pdf>.

⁶³ More information are available on the website of the tribunal (in English and Finnish): <https://www.yvtltk.fi/en/>.

France

Although the principle of equality appears in the preamble of the French Constitution, it does not explicitly prohibit discrimination.

Discrimination on the grounds of disability is prohibited in several pieces of legislation. The **Criminal Code** enshrines a general prohibition of discrimination in relation to work and employment, and access to goods and services,⁶⁴ applying to the public and private sectors, including individuals and companies. The **Labour Code** specifically covers discrimination in the field of employment and recognises the denial of reasonable accommodation as a form of discrimination (limited to the field of employment).⁶⁵ In practice, 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 grounds of disability - making disability the most common ground of discrimination in France.⁶⁶ Most of the claims received (50%) concern discrimination in the field of employment.⁶⁷

Contacts of the Defender of Rights

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⁶⁴ Article 225 of the French Criminal Code.

⁶⁵ Law on Equal Rights and Opportunities, Participation and Citizenship of Persons with Disabilities, article 24; and article L. 5213-6 of the Labour Code.

⁶⁶ 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.

⁶⁷ Ibid.

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.**

because of disability”.

At federal level, discrimination on the grounds 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. Therefore, in all federal administrative procedures, deaf persons are entitled to ask for free sign language interpretation and blind persons can receive all documents in Braille free of cost. 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.

In theory, the scope of application of the AGG is broader than the BGG because it covers the whole field of equal opportunities in employment and civil law. In fact, it is weaker than

the BGG, as discrimination under civil law is prohibited only when it arises in a large number of cases,⁶⁸ such as mass contracts. For instance, rental contracts 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 at least 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 within the BGG. Both individuals and organisations of persons with disabilities can start a procedure.

The independent anti-discrimination body is the **Federal Anti-Discrimination Agency** (*Antidiskriminierungsstelle des Bundes*, known as “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. Furthermore, 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

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Helpline: +49(0)3018 555 1865

Telephone number: +49(0)3018 555 1855

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

General email address: beratung@ads.bund.de

⁶⁸ 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.

Greece

The Greek Constitution enshrines the principle of equality before the law.

Law 4443/2016 prohibits discrimination on the grounds of disability, including the denial of reasonable accommodation as a form of discrimination, in the field of employment and labour. The same law provides that the prohibition of discrimination on the grounds 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. At the 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 have been adopted by September 2018. Yet, at the time of publication of this report, the former (Presidential Decree) was still not enacted.

Organisations of persons with disabilities reported that, due to austerity measures, funding for the implementation of policies and programmes that could contribute to the achievement of equality is not sufficient. For example, in 2015 the Greek Ombudsman noted that in the field of education of persons with disabilities, the inadequate implementation of special measures, such as individual support measures foreseen in Greek legislation, lead to discrimination against children with disabilities.⁶⁹

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 other things, 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 the dispute, carry out independent research and suggest sanctions for the employers to the Greek Labour Inspectorate. In 2016, 33% of the complaints he received were about discrimination on the grounds 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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Helpline: +30 213 1306 600

Telephone number: +30 213 1306 794

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

General email address: press@synigoros.gr

⁶⁹ 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>.

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.**

without discrimination, including on the grounds of disability. It 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

prohibits discrimination on the grounds 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". In addition, it does not recognise the denial of reasonable accommodation as a form of discrimination, nor contain 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 **Act I of 2012 on the Labour Code**,⁷⁰ **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 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 2017 "List of issues prior to submission of the combined second and third periodic reports of Hungary".⁷¹

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 has a mandate to initiate court proceedings. The **Commissioner for Fundamental Rights** acts as the Hungarian Ombudsman covering all fundamental rights. It can act upon complaints or on its own initiative in the case of human rights infringements. It can adopt non-binding decisions or recommendations in relation to discrimination, and can initiate a review of legislation by the Constitutional Court.

⁷⁰ Act I of 2012 on the Labour Code, section 51(5).

⁷¹ 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.

Contacts of the Equal Treatment Authority

Postal address: Krisztina körút 39/B, 1013 Budapest, Hungary

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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

The Irish constitution enshrines the right to equality before the law.

Article 14 (the principle of non-discrimination) of the European Convention on Human Rights, has been incorporated into Irish law through the European Convention on Human Rights Act 2003-2014.

Discrimination based on disability is prohibited under the **Equal Status Act 2000**⁷² and the **Employment Equality Act**.⁷³ The Equal Status Act and the Employment Equality Act extend to both the public and private sphere. The Equal Status Act applies mainly in the areas of access to goods and services, provision of accommodation and to educational establishments. It covers direct and indirect discrimination, discrimination by association, discrimination by imputation, harassment, incitement to discrimination as well as the refusal to provide reasonable accommodation. The Employment Equality Act covers the field of employment, including access to, and dismissal from employment, which prohibits direct and indirect discrimination, discrimination by imputation, discrimination by association and harassment. The concept of reasonable accommodation was incorporated under the duty of the employer to provide “appropriate measures”.

Section 42 of the Irish Human Rights and Equality Commission Act 2014 creates a legal obligation on all public bodies to promote equality, prevent discrimination (including disability discrimination) and protect the human rights of their employees, customers, service users and everyone affected by their policies and plans.

The **Human Rights and Equality Commission** is the independent national human rights and equality institution of Ireland. It promotes equality and non-discrimination, reviews the effectiveness of human rights and equality law, policy and practice and can provide practical help, including legal assistance to help people defend their rights, and contribute 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: info@ihrec.ie

⁷² Text available here: https://www.lawreform.ie/_fileupload/Restatement/First%20Programme%20of%20Restatement/EN_ACT_2000_0008.PDF.

⁷³ Text available here: http://www.lawreform.ie/_fileupload/RevisedActs/WithAnnotations/EN_ACT_1998_0021.PDF.

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 recognises 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 for all citizens.⁷⁴

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 including access to goods and services, employment, housing, etc. This law does not include a definition of reasonable accommodation and does not explicitly recognise the denial of reasonable accommodation, discrimination by association, and multiple and intersectional discrimination as forms 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.⁷⁵ In 2013, the Court of Justice of the European Union had already judged that by not introducing requirements for employers to ensure reasonable accommodation of employees with disabilities in its legislation, Italy had failed to its obligations under EU law (Council Directive 2000/78/EC) and the UN CRPD.⁷⁶

⁷⁴ Text in English available here: <http://www.jus.unitn.it/dsg/pubblicazioni/costituzione/costituzione%20genn2008eng.pdf>.

⁷⁵ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Italy (2016), paragraphs 9 and 11.

⁷⁶ 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>.

There is no strong independent equality body that promotes equality and prevents and investigates discrimination on the grounds 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 Labour and Social Affairs there is also a body for equality between men and women called the **National Equality Councillor** whose 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 disabilities and the disability gender gap. The actions carried out by these two 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 effectiveness and efficiency in the protection of persons with disabilities, and in particular girls and women with disabilities.

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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 recognise 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 recognises the denial of reasonable accommodation, and multiple and intersectional forms of discrimination;
 - (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 the realisation of human rights without discrimination.

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 harmonised 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 file a complaint. There is also a fear of victimisation that contributes to under-use of the legislation in litigation.⁷⁷ They also noted that very little work on prevention of discrimination or recognition of discrimination is conducted among professionals, employers and the general public.⁷⁸

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 decisions 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 there.

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⁷⁷ 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.

⁷⁸ Ibid, page 3.

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

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) Recognise 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.

The **Law on Equal Treatment** establishes the anti-discrimination legal framework, including on the grounds of disability, by prohibiting direct and indirect discrimination, harassment and instruction to discriminate. It applies to all legal acts, including labour, education and access to goods and services.⁷⁹ However, the law does not explicitly recognise the denial of reasonable accommodation as a form of discrimination on the grounds 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 employment, work, plan a career, and have access to training, including providing reasonable accommodation if it does not create disproportional burden.⁸⁰

The issue relating to reasonable accommodation was raised by organisations of persons with disabilities⁸¹ 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.⁸² The burden of proof is transferred to the perpetrator. It means that the person who is the subject of the complaint 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 promoting 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 the judiciary, or other appropriate institutions for further investigation.

⁷⁹ 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=-oo3xf4tu>.

⁸⁰ Lithuanian Forum for the Disabled, Proposal for the List of issues in relation to the initial report of the Republic of Lithuania, paragraph 7.

⁸¹ Ibid.

⁸² UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Lithuania (2016), paragraph 16.

According to amendments to the Law on Equal Treatment adopted at the end of 2018, a new Commission for monitoring the rights of persons with disabilities established by the Office of the Equal Opportunities Ombudsperson will be established. The Commission will monitor the implementation of the CRPD from July 1, 2019, as per article 33.2 of the CRPD.

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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 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 recognises 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 complaints 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 mention discrimination or any discriminatory grounds.⁸³

Anti-discrimination legislation was introduced through the adoption of the **Acts of 28th and 29th 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 grounds of disability.⁸⁴

Organisations of persons with disabilities reported that the Act is not applied strictly enough in practice. For instance, they noted that in employment matters, discrimination is common and legal quotas are widely disregarded. Persons with disabilities are often either not aware of their rights and the anti-discrimination legal framework, or afraid to claim their rights.⁸⁵

The **Centre for Equal Treatment** is the national body that specialises 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 emphasised that the Center lacks the required legal jurisdiction to deal with complaints relating to discrimination, particularly multiple discrimination or discrimination in the private sector, or the power to remedy complaints.⁸⁶ 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 a lack of awareness by persons with disabilities of existing mechanisms to defend their rights.⁸⁷

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⁸³ 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.

⁸⁴ 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.

⁸⁵ 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.

⁸⁶ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Luxembourg (2017), paragraph 12.

⁸⁷ Ibid.

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;
 - (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.⁸⁸

The **Equal Opportunities (Persons with Disability) Act** of 2000 sets the anti-discrimination legal framework for persons with disabilities.⁸⁹ It was amended in 2016 to strengthen the right of equality of persons with disabilities.⁹⁰ In addition, 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.

⁸⁸ See article 45(3) of the Constitution of Malta. English version available here: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566>.

⁸⁹ English version available here: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8879&l=1>.

⁹⁰ 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.

The amended legislation includes direct and indirect discrimination, multiple and intersectional forms of discrimination, as well as harassment. It covers the areas of employment, education, health and access to goods and services, including housing. Denial of reasonable accommodation is recognised as a form of discrimination on the grounds of disability only in relation to employment.⁹¹ The Labour Code prohibits discrimination on the grounds of disability⁹² and requires employers to take “appropriate measures” to ensure employment of persons with disabilities.⁹³

The **Commission on the Rights of Persons with Disabilities**, established under the Equal Opportunities Act, has the mandate to investigate complaints it receives about the breaching of rights arising from discrimination, and promote, protect and monitor the implementation of the CRPD. It can represent victims of discrimination on the grounds 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 due to lack of allocated funds to do so.

Unfortunately, contact with organisations of persons with disabilities show that some have little awareness, 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. Furthermore, discrimination still takes place in practice. For instance, it was reported that although education authorities, bodies or institutions are prohibited to discriminate on the grounds of disability, the directives issued by the Malta Union of Teachers create many barriers, resulting in discrimination against many students with disabilities.⁹⁴

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⁹¹ Equal Opportunities (Persons with Disability) Act, Part IV, article 7(2)(d).

⁹² Labour Code of Malta, Article L. 251-1 (1).

⁹³ Ibid, Article L. 562-1 (5).

⁹⁴ 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.

Netherlands

Article 1 of the Dutch Constitution prohibits discrimination. In its report submitted to the CRPD Committee the Dutch government noted that a bill to include disability had been submitted to Parliament.⁹⁵

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 accommodation⁹⁶ “on the grounds of disability or chronic illness” in the areas of employment, education and access to public transport services. The Act provides **exceptions** not in line with article 5 of the CRPD that limit the scope of protection against discrimination.⁹⁷

Incitation to, or participation in, acts of hatred or discrimination based on disability are explicitly prohibited by the Dutch Criminal Code.⁹⁸ The Criminal Code also recognises 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”.⁹⁹

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 an 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 criticised by organisations of persons with disabilities in the country.

⁹⁵ Initial report on the implementation by the Netherlands of the UN Convention on the Rights of Persons with Disabilities (12 June 2018), page 16.

⁹⁶ Section 2 of the Act on Equal Treatment on the Grounds of Disability or Chronic Illness. English text available here (unofficial translation): http://www.equalrightstrust.org/ertdocumentbank//Microsoft%20Word%20-%20EQUAL_TREATMENT.pdf.

⁹⁷ 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.

⁹⁸ See articles 137d and 137f of the Dutch Criminal Code.

⁹⁹ 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.

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

7. The Committee is concerned at the absence of:
 - (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 recognise reasonable accommodation across all areas of life, and that sanctions its denial as a form of disability-based discrimination;
 - (b) Explicitly recognise 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 enshrines the principle of equality before the law and the right to equal treatment by public authorities. However, it does not mention any discriminatory grounds.¹⁰⁰ Article 69 mentions that “public authorities shall provide, in accordance with the statute, aid to disabled persons to ensure their subsistence, adaptation to work and social communication”.

¹⁰⁰ See article 32 of the Constitution of Poland. English text available here: <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

Discrimination on the grounds of disability is **prohibited solely in the field of employment by the Act of 3rd December 2010 on the implementation of some regulations of the European Union regarding equal treatment (Act on Equal Treatment)**,¹⁰¹ contrary to other grounds that benefit from a wider scope of protection against discrimination.¹⁰² 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 grounds of disability.

Organisations of persons with disabilities reported that despite numerous opinions being presented to Ministry of Family, Work and Social Policy and the Government Plenipotentiary for Equal Treatment, no legislative steps were taken to remedy the lack of a strong anti-discrimination legal framework in compliance with the CRPD.¹⁰³ For instance, there is no intersectional approach to disability or recognition of multiple discrimination. Discrimination against women and girls with disabilities¹⁰⁴ and against persons with psychosocial with disabilities¹⁰⁵ were particularly reported to the CRPD Committee. The Commissioner for Human Rights also noted a low awareness and knowledge about the rights of persons with disabilities and bodies mandated to provide assistance to people facing discrimination.¹⁰⁶

The **Commissioner for Human Rights** is the independent authority with the mandate to ensure the protection of liberties and human and citizen's rights, as well as the implementation of the principle of equal treatment, as set out in the Constitution and other normative acts. As Poland ratified the CRPD, the Commissioner was designated as the independent body that supports, protects and monitors the Convention's implementation. 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 intervene before courts, including the Constitutional Tribunal. The Commissioner brings cases only against public authorities. In cases where only private entities are involved, the Commissioner can indicate legal measures to which a given person is entitled.

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¹⁰¹ English text available here: <https://www.rpo.gov.pl/en/content/act-3rd-december-2010-implementation-some-regulations-european-union-regarding-equal>.

¹⁰² 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.

¹⁰³ Ibid.

¹⁰⁴ Ibid, page 13.

¹⁰⁵ The Commissioner for Human Rights, Realisation of the obligations arising from the Convention on the Rights of Persons with Disabilities by Poland, page 5.

¹⁰⁶ Ibid.

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.**

Article 13 of the Portuguese Constitution¹⁰⁷ 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 a few discriminatory grounds are listed to serve as examples and that the list is not meant to be complete nor exclusive.

Law No. 46/2006 of August 28th¹⁰⁸ 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.)¹⁰⁹ Formally it prohibits direct and indirect discrimination on the grounds of disability, in all its forms. Yet, the law does not describe what discrimination is and does not explicitly recognise the concept of reasonable accommodation 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". Additionally, 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 grounds of disability is still taking place. The majority of Portuguese people questioned by Eurobarometer recognised that there is widespread discrimination of persons with disabilities.¹¹⁰ Organisations also emphasised the fact that there is a widespread lack of knowledge among persons with disabilities and their organisations about their rights and

¹⁰⁷ English text available here: <https://dre.pt/constitution-of-the-portuguese-republic>.

¹⁰⁸ Text in Portuguese here: http://www.inr.pt/bibliopac/diplomas/lei_46_2006.htm.

¹⁰⁹ See article 4 of Law No. 46/2006 of August 28.

¹¹⁰ 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>.

Portuguese legislation.¹¹¹ According to some studies there is no specific public institution with the mandate to receive complaints and apply immediate penalties or power to close institutions where discriminatory practices take place. The Portuguese police are 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”.¹¹² 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 assists people with their claims of discrimination on the grounds 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.

Contacts of the Omdudsman

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Free Helpline: 800 20 84 62

Telephone number: (+351) 213926600/19/21/22

Website: www.provedor-jus.pt

General email address: provedor@provedor-jus.pt

¹¹¹ 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>.

¹¹² 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 non-discrimination in several articles.¹¹³

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.¹¹⁴ The Ordinance explicitly prohibits discrimination on a number of grounds, including disability.¹¹⁵ However, it does not provide a definition of the meaning of discrimination on the grounds of disability, as well as on any other grounds.¹¹⁶ Even **Law no. 448/2006 of 6th December 2008 regarding the Protection and Promotion of the Rights of Disabled Persons**¹¹⁷ that refers to “the prevention and fight against discrimination” does not define discrimination on the grounds of disability.¹¹⁸

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 grounds of disability are still lacking. The concept of reasonable accommodation is mentioned solely in relation to the workplace.¹¹⁹ Law 448/2006 outlines 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 Parliament that can intervene before courts but also formally take legally binding decisions on complaints. In 2017, out of 652 petitions received, 74 were on the grounds of disability.¹²⁰

Contacts of the National Council for Combating Discrimination

Postal address: Piata Valter Maracineanu nr 1-3, sector 1, 010155 Bucharest, Romania

Telephone number: +4 021 312 65 78/79

Website: <http://www.cncd.org.ro/>

General email address: support@cncd.org.ro

¹¹³ 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>.

¹¹⁴ Governmental Ordinance 137/2000, article 3.

¹¹⁵ Governmental Ordinance 137/2000, article 2(1).

¹¹⁶ See: European network of legal experts in gender equality and non-discrimination, Country report Non Discrimination, Romania 2017, page 41.

¹¹⁷ English text available here: <http://www.equalrightstrust.org/ertdocumentbank/LEGE%20448%20engleza.pdf>.

¹¹⁸ Article 3 of Law no. 448/2006.

¹¹⁹ See articles 5 and 83 and of Law no. 448/2006: “reasonable adaptation to the workplace.”

¹²⁰ 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>.

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

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 recognise 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 Republic¹²¹ ensures that fundamental rights and freedom are guaranteed to all without discrimination.

The **Anti-Discrimination Act** (365/2004 subsequently amended) sets the anti-discrimination legal framework. It establishes a generally-applicable principle of equal treatment based on the prohibition of discrimination, including on the basis of disability. Although it defines direct discrimination, indirect discrimination, harassment, instruction and incitement to discriminate, and victimisation, it does not recognise multiple and intersectional discrimination. **The denial of reasonable accommodation as forms of discrimination on the grounds of disability is recognised only in relation to employment.**

The restriction of the right to vote linked to deprivation of legal capacity that was enshrined

¹²¹ English text available here: <https://www.prezident.sk/upload-files/46422.pdf>.

in Act No. 180/2014 on the Conditions for the Execution of Electoral Law has recently been abolished. All persons with disabilities currently have the right to vote.

The **Office of the Commissioner for People with Disabilities** was established in March 2016, based on Act 176/2015 on the Commissioner for children and Commissioner for People with Disabilities. The Commissioner for People with Disabilities is involved in the protection of rights of persons with disabilities by supporting and enforcing of rights assigned to a person with disabilities under international treaties by which the Slovak Republic is bound.

Contacts of the Office of the Commissioner for People with Disabilities

Postal address: Racianska 153, 831 54 Bratislava, Slovakia

Telephone number: +421 2 2042 0309

Website: <http://komisarprezdravotnepostihnutych.sk>

General email address: sekretariat@komisar.sk

Victims of discrimination can also contact the **National Centre for Human Rights**. This is an independent body that unites the mandate of the National Human Rights Institution and the Equality Body. It can represent victims of discrimination in front of courts, intervene before the court, bring proceedings in its own name, and adopt non-legally binding decisions or recommendations.

Contacts of the National Centre for Human Rights

Postal address: Laurinská 18, 811 01 Bratislava, Slovakia

Telephone number: +421 2 208 501 22

Website: www.snslp.sk

General email address: info@snslp.sk

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 prioritising 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 unconstitutional¹²² but does not explicitly refer to disability as grounds for discrimination. However, article 14 on equality before the law was amended in 2004 to add disability to 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)**¹²³ and the **Equalisation**

¹²² English text available here: <http://www.us-rs.si/media/constitution.pdf>.

¹²³ English text available here: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/68656/89155/F265912074/SVN68656.pdf>.

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.¹²⁴ The ZIMI Act includes in particular: prohibition of discrimination by State authorities, State and local self-government bodies, bearers of public authority and public service providers; equal participation in proceedings; access to services and use and adaptation of buildings and facilities in public use; prohibition of writing and displaying discriminating messages and symbols; and access to inclusive education, health, means of residence, information, culture and public transportation. However, Slovenia failed to recognise the denial of reasonable accommodation as a form of discrimination on the grounds of disability.

The **Advocate of the Principle of Equality** has the mandate to address cases of alleged discrimination and issues, as well as **legally binding** and non-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 paralysed in its role of assisting victims of discrimination.¹²⁵

Contacts of the Advocate of the Principle of Equality

Postal address: Železna cesta 16, 1000 Ljubljana, Slovenia

Telephone number: 00386 1 473 5531

Website: <http://www.zagovornik.si>

General email address: gp@zagovornik-rs.si

¹²⁴ 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).

¹²⁵ Shadow report of the group of non-governmental organisations from Slovenia on implementation of CRPD in Slovenia (2008 - 2017), page 11.

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 marginalised. 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. Under the Spanish Constitution¹²⁶ the CRPD as international treaty is directly applicable in the national legal order. This means that it should prevail over domestic laws.

The Spanish government is in the process of amending article 49 of the Spanish constitution (concerning people with disabilities) in order to better protect their rights. The new wording focuses on the rights and duties held by persons with disabilities as free and equal citizens. It also sets goals for positive actions by public powers - including personal autonomy and social inclusion - and points out that policies must at all times respect free choice and preferences of people with disabilities.

Royal Legislative Decree 1/2013 of 29th 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 grounds of disability.¹²⁷ The law includes direct and indirect discrimination, discrimination by association, harassment, non-compliance with accessibility requirements and legally established positive action measures, and the denial of reasonable accommodation.¹²⁸ It covers many areas such as access to goods and services, employment and education. In practice, organisations of persons with disabilities reported that there are no specific programmes to ensure reasonable accommodation and regrets a lack of political and economic commitment to

¹²⁶ Article 96(1) of the Spanish Constitution.

¹²⁷ Spanish text available here: <http://www.boe.es/boe/dias/2013/12/03/pdfs/BOE-A-2013-12632.pdf>.

¹²⁸ See in particular article 63 of the Royal Legislative Decree 1/2013.

disability policies, as well as the lack of awareness-raising.

The Law of the General Electoral Regime is being revised to allow all persons with disabilities, without exception, to exercise their right to vote.

A **Disability Assistance Office** ("OADIS") was created as the permanent and specialised 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, and supports complaints presented by persons with disabilities. It is not an independent equality body.

Contacts of the Disability Assistance Office

Postal address: C/ Alcalá, 37 - 7ª Planta, Despacho D-708, Madrid 2801, Spain

Telephone number: (+34) 91 822 65 12

Website: <http://www.oadis.mscbs.gob.es/>

General email address: oadis@mscbs.es

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 Parliament and send recommendations to public institutions. One part of the 2017 report addressed students with disabilities.¹²⁹

Contacts of the Ombudsman

Postal address: C/ Zurbano 42, 28010 Madrid, Spain

Telephone number: 900 101 025

Website: <https://www.defensordelpueblo.es/>

General email address: registro@defensordelpueblo.es

¹²⁹ Read more on the website of the Spanish Ombudsman: <https://www.defensordelpueblo.es/en/news/spanish-ombudsman-made-2175-recommendations-suggestions-2017/>.

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 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 to.¹³⁰

In addition, the **Swedish Discrimination Act (2008:567)** was adopted to promote equal treatment and combat discrimination, including on the grounds of disability.¹³¹ The Act covers, among other things, the areas of work and employment, education, access to goods, services and housing (outside the private and family sphere), health and medical care. It includes direct and indirect discrimination, harassment and instruction to discriminate. However, multiple and intersectional forms of discrimination, as well as the concept of reasonable accommodation, have not been included and defined in the Discrimination Act. In relation to disability, the Swedish legislator introduced the notion of “inadequate accessibility” in 2015.¹³² Under this notion, the law prohibits certain omissions to provide

¹³⁰ See article 2 of the Constitution of Sweden. English text available here: <http://www.parliament.am/library/sahmanadrutyunner/Sweden.pdf>.

¹³¹ Text in English available here: https://www.government.se/4a788f/contentassets/6732121a2cb54ee3b21da9c628b6bdc7/oversattning-diskrimineringslagen_eng.pdf.

¹³² 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.”

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 in the housing market, and is regulated as an exception to the prohibition of discrimination. If a provider is renting its facilities, the owner of the facility is not covered by the law. 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.

The **Equality Ombudsman** has the task of supervising 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. Organisations of persons with disabilities reported that in practice few cases reported to the Ombudsman are considered or brought to court. This has been highly criticised by Swedish civil society.

Contacts of the Equality Ombudsman

Postal address: DO, P.O. Box 4057, SE-169 04 Solna, Sweden

Telephone number: +46 8 120 20 700

Website: www.do.se

General email address: do@do.se

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 grounds of disability is not explicitly mentioned in the **Human Rights Act 1998** that incorporated the European Convention on Human Rights into the British legislation.¹³³ It was however included in the **Equality Act 2010** that prohibits discrimination on various grounds, with specific provisions on employment, provision of services, exercise of public function and education in **England, Scotland and Wales**.¹³⁴ 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

¹³³ 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.

¹³⁴ 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.

as a form of discrimination on the grounds of disability.¹³⁵ 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.¹³⁶ For instance, organisations of persons with disabilities reported that schools are not under a statutory duty to make reasonable adjustments in relation to physical features.¹³⁷

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.¹³⁸

Two independent equality bodies co-exist in the United Kingdom. The **Equality and Human Rights Commission** enforces equality legislation in Great Britain. It can assist victims of alleged discrimination, represent them in front of courts and bring proceedings 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 provides legal support to alleged victims of discrimination in Northern Ireland. It can take non-legally-binding decisions or recommendations in relation to discrimination cases. Contrary to the Equality and Human Rights Commission, it cannot represent parties in court.

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

Postal address: Fleetbank House 2 - 6 Salisbury Square London EC4Y 8JX United Kingdom

Telephone number: 0808 800 0082

Website: <http://www.equalityhumanrights.com/>

General email address: international@equalityhumanrights.com

Contacts of the Equality Commission for Northern Ireland

Postal address: Equality House 7-9 Shaftesbury Square Belfast BT2 7DP

Telephone number: +46 8 120 20 700

Website: www.equalityni.org

General email address: information@equalityni.org

¹³⁵ See under sections 20-22 and 189 of the Equality Act 2010.

¹³⁶ UN Committee on the Rights of Persons with Disabilities, Concluding Observations on the United Kingdom (2017), paragraph 16.

¹³⁷ 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.

¹³⁸ 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 grounds 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);¹³⁹ 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).¹⁴⁰

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.¹⁴¹ For instance, the Ombudsman may deal with issues of discrimination on the grounds of disability brought by students with disabilities in European schools, or employees with disabilities in the European Commission.¹⁴²

Contacts of the European Ombudsman

Postal address in Strasbourg: 1 avenue du Président Robert Schuman
CS 30403 F-67001 Strasbourg Cedex, France

Postal address in Brussels: Rue Wiertz B-1047 Bruxelles, Belgium

Telephone number: +33 3 88 17 23 13 (Strasbourg)

Website: <https://www.ombudsman.europa.eu>

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.

¹³⁹ 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>).

¹⁴⁰ This is a provision of general application for all the competences that are conferred to the EU by the Member States.

¹⁴¹ Article 43 of the Charter of Fundamental Rights of the European Union.

¹⁴² More information on the European Ombudsman is available in all EU language and in Easy to read on the Ombudsman's official website.

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 origin¹⁴³ and gender¹⁴⁴ in a broad range of fields, such as employment, social protection and benefits or compensation for social disadvantages, education and goods and services available to the public, including housing and health care.

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.**¹⁴⁵ 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 EU Employment Equality Directive in protecting persons with disabilities from discrimination,¹⁴⁶ usually extending the protection to other areas of life.

Multiple and intersectional forms of discrimination are not reflected in the current EU legislation.¹⁴⁷

5.2.2 Proposal of a horizontal equal treatment directive

In 2008, the European Commission proposed a directive¹⁴⁸ 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:

¹⁴³ 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>).

¹⁴⁴ 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>).

¹⁴⁵ 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>).

¹⁴⁶ More details can be found in Chapter 4 of this report.

¹⁴⁷ Only very small references on multiple discrimination currently appear in EU legislation, for instance in Recital 14 of the Race Equality Directive.

¹⁴⁸ 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>).

- 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 has been **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 grounds 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.

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 Incorporation of non-discrimination in EU cohesion policy

The EU included the principle of non-discrimination in the [2014-2020 Regulation \(EU\) No 1303/2013](#) laying down common provisions on a number of fund-specific regulations related to EU structural and investment funds.¹⁴⁹ Article 7 titled “Promotion of equality between men and women and non-discrimination” underlined the principle that “[t]he **Member States and the Commission shall take appropriate steps to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the preparation and implementation of programmes.** In particular, accessibility for persons with disabilities shall be taken into account throughout the preparation and implementation of programmes”. This means that EU Member States cannot use EU funds in a way that would discriminate against persons with disabilities. For instance, States are not authorised to use EU funds to build inaccessible infrastructure or to build/renovate institutional care settings because they are discriminatory.

Unfortunately, this article has been removed in the [proposal for the post-2020 Common Provisions Regulation](#), supposedly as part of an effort by the European Commission to simplify the text.¹⁵⁰ As a result of the disappearance of this key principle from the current Common Provisions Regulation, EDF and a large number of organisations working on anti-discrimination have been calling on the co-legislators to support the reinstatement of Article 7.

5.4 Gaps in EU law: how to ensure better protection against discrimination on the grounds of disability

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

5.4.1 Ensuring consistency in protection against discrimination

In Chapter 3, we observed that, even though some Member States developed comprehensive anti-discrimination legal frameworks, 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 a national level, discrimination based on disability was not 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.

¹⁴⁹ For the Regulation spanning 2014-2020, this covered European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund. For the period 2021-2027 the proposed Regulation is set to cover the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument.

¹⁵⁰ The proposal is available on the website of the European Commission at: https://ec.europa.eu/commission/sites/beta-political/files/budget-may2018-common-provisions_en.pdf.

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

In 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 grounds of disability in all areas of life.

Such a 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. The recognition of the denial of reasonable accommodation as a form of discrimination on the grounds of disability is particularly important to ensure the principle of equality. It must be explicitly recognised at the EU level - as it does not appear explicitly in the 2000 Employment Equality Directive.

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**”.¹⁵¹

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

Both at EU and national levels, legislation prohibiting discrimination on the grounds 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”.¹⁵²

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

¹⁵¹ CRPD Committee, General Comment No. 6, paragraphs 40-42.

¹⁵² CRPD Committee, General Comment No. 7, paragraph 73(f).

Conclusion

The ratification of the CRPD by the EU and all its Member States was not enough to ensure that the right of persons with disabilities to equality and non-discrimination is implemented all over the European Union. While some progress has been made, much still needs to be achieved at both national and EU levels. More work must also be done to reach the Sustainable Development Goals by 2030.

At national level

Analysis of national anti-discrimination law

At the date of publication of this report, most countries of the EU prohibit discrimination on the grounds of disability beyond the field of employment. Twenty-four (24) countries have provisions on discrimination based on disability that also cover other areas of life,¹⁵³ such as access to goods and services (including housing), education and social protection. Conversely, Estonia, Greece, Poland and Slovakia only protect persons with disabilities against discrimination in the field of work, as required by the 2000 EU Employment Equality Directive.

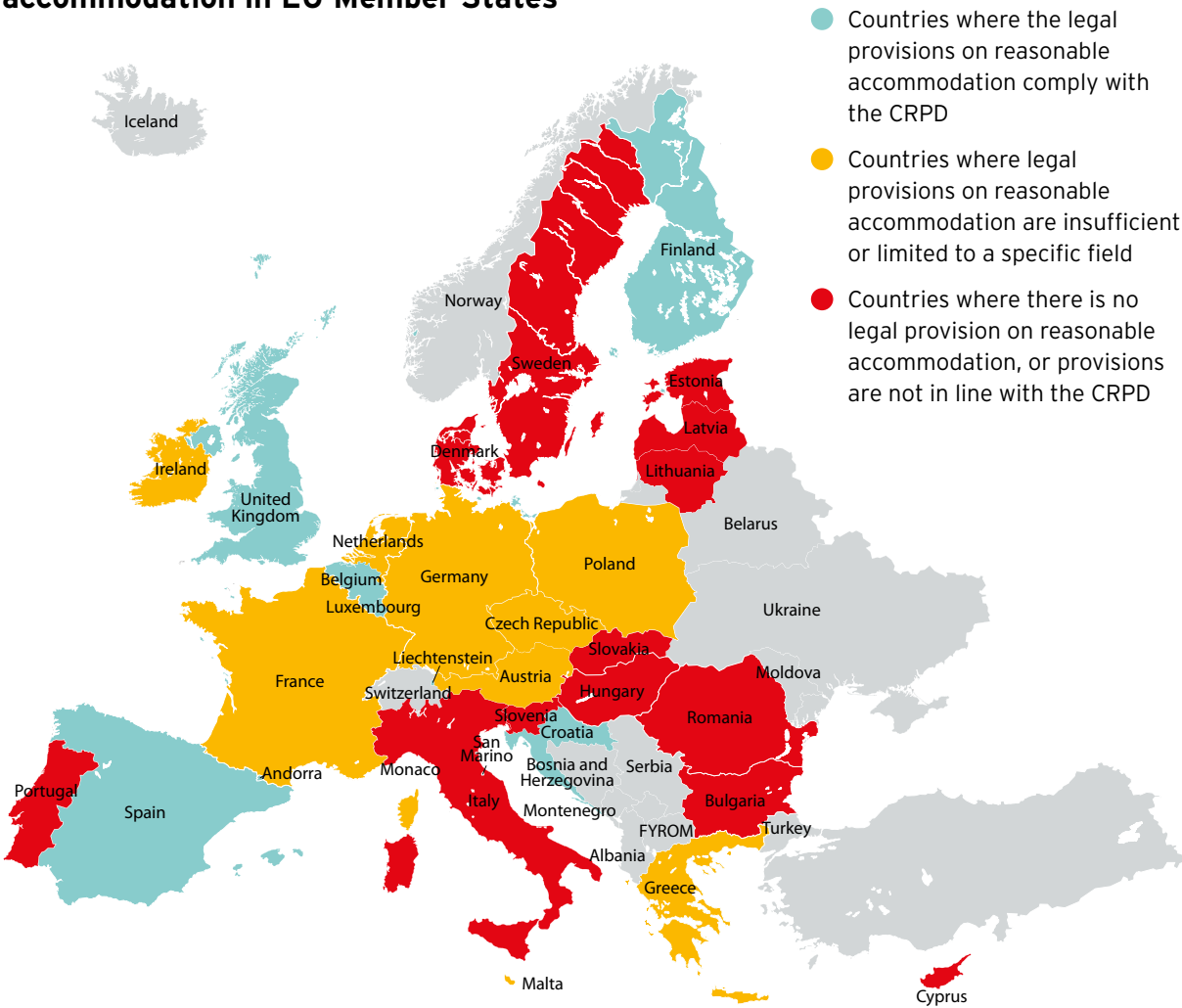
EU Member States prohibiting discrimination based on discrimination beyond the field of employment



¹⁵³ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Romania, Slovenia, Spain, Sweden, and the United Kingdom.

While this progress in twenty-four Member States is positive, in reality it is limited by the lack of adequate recognition of the concept of reasonable accommodation and by ignoring that, in line with Article 2 of the CRPD, the denial of reasonable accommodation is as a form of discrimination on the grounds of disability. The results of EDF research on national laws and CRPD Committee’s concluding observations reflect that only in five (5) countries, legal provisions on reasonable accommodation would qualify as complying with the CRPD.¹⁵⁴ In ten (10) countries,¹⁵⁵ legal provisions are insufficient, often limited to the field of employment.¹⁵⁶ In thirteen (13) countries, there is no legal provision on reasonable accommodation, or provisions are not in line with the CRPD.¹⁵⁷ For instance, the principle of reasonable accommodation is not defined, nor is its denial explicitly recognised as a form of discrimination.

Legal provisions on reasonable accommodation in EU Member States



¹⁵⁴ Belgium, Croatia, Finland, Spain and the UK.
¹⁵⁵ Austria, Czech Republic, France, Germany, Greece, Ireland, Luxembourg, Malta, Netherlands and Poland.
¹⁵⁶ Czech Republic, France, Greece, Malta and Poland.
¹⁵⁷ Bulgaria, Cyprus, Denmark, Estonia, Hungary, Italy, Latvia, Lithuania, Portugal, Romania, Slovakia, Slovenia and Sweden.

There are also major differences with regard to the legal recognition of discrimination by association, and multiple and intersectional forms of discrimination.

Forms of discrimination perpetuated by law

Even in countries that adopted strong provisions to prohibit discrimination based on disability, indirect forms of discrimination are still often enshrined in laws and practices. For instance, almost all EU Member States permit the removal of legal capacity of persons with intellectual or psychosocial disabilities, segregated forms of education of pupils with disabilities, forced treatment and placement of persons with psychosocial disabilities, and some forms of institutionalisation.

Discriminatory practices

Adoption of a strong anti-discrimination legislation is not sufficient to combat inequality and discrimination. In practice, persons with disabilities face constant forms of discrimination all over the European Union. Despite legal prohibition, discrimination is particularly reported in the field of employment.

Many factors explain this situation:

- A general lack of awareness of what constitutes discrimination on the grounds of disability – for instance, employers are not aware of their obligation to provide reasonable accommodation to potential and current employees with disabilities.
- Lack of adequate implementation of the law – the law is not applied in practice; in certain cases where the law is implemented, sanctions consist of fines, which do not create a situation of equality.
- Lack of avenues for legal action – in many countries, it is very difficult for persons with disabilities to claim their rights.

The important role of equality bodies

Equality bodies in charge of assisting victims of discrimination, and monitoring and reporting on discrimination issues, were very positively welcomed by persons with disabilities and their representative organisations. Such bodies have an important role to play in promoting equality and implementing and monitoring legislation at national level. Ensuring their independence and proper funding is therefore especially important.

In addition, specific tribunals on equality and non-discrimination, such as the one operating in Finland, also allow persons with disabilities to bring discrimination claims more easily to courts and to obtain justice.

At EU level

This report highlighted the very limited protection against discrimination on the grounds of disability in EU legislation. Contrary to other grounds of discrimination, such as race and gender, Member States are only required to prohibit discrimination on the grounds of disability in the field of employment, according to the 2000 Employment Equality Directive.

The 2008 proposal of a horizontal equal treatment directive, still blocked by the Council, was an important step for the EU to ensure a more harmonised protection in all EU Member States. More than ten years since this proposal was adopted by the Commission, anti-discrimination legislation at EU level is still very much needed. Beyond the obligation to implement the rights of equality and non-discrimination as required by the CRPD, such protection is crucial to protect the freedom of movement of more than 80 million EU citizens with disabilities. In practice, the different levels of protection we still face today are likely to continue having a negative impact on the freedom of movement of persons with disabilities in the EU, in particular on workers, tourists and students with disabilities.

Recommendations

1) The EU should harmonise equality standards through the adoption of a broad and ambitious EU legislation prohibiting discrimination.

All persons with disabilities should be protected against all forms of discrimination (direct, indirect discrimination, denial of reasonable accommodation, discrimination by association, multiple and intersectional forms of discrimination, harassment, etc.) not only in the field of employment, but in all areas of life at EU and national levels. Such legislation at both EU and national levels must be in line with Articles 2 and 5 of the CRPD and General Comment No. 6 of the CRPD Committee. In particular, the obligation to provide reasonable accommodation should be included in all legal frameworks on equal treatment, and the denial of reasonable accommodation should be recognised as a form of discrimination.

2) The EU and its Member States should urgently repeal all discriminatory laws and take measures to eliminate discriminatory practices.

This includes, but is not limited to: removal of legal capacity authorised by law against persons with intellectual or psychosocial disabilities, segregated forms of education of pupils with disabilities, forced treatment and placement of persons with psychosocial disabilities, forms of institutionalisation, etc.

3) The EU and its Member States should adopt policies and programmes to combat all forms of discrimination on the grounds of disability, including multiple and intersectional forms of discrimination.

They should increase their efforts to adequately address the situation of the most marginalised persons with disabilities, in particular women and girls with disabilities, children and young persons with disabilities, older persons with disabilities, asylum seekers and refugees with disabilities, LGBTI persons with disabilities, persons with intellectual and/or psychosocial disabilities, deafblind persons and persons with multiple disabilities or with high support needs. In order to address situations of violence faced by women and girls with disabilities, the EU and all its Member States should promptly ratify the Istanbul Convention.

4) The EU should ensure that the principles of non-discrimination and accessibility are maintained in the Common Provision Regulation for the post-2020 EU budget, as well as in all funds-specific regulations.

No EU funds should be spent in, or outside Europe which discriminate, segregate or exclude persons with disabilities.

5) Persons with disabilities should be continuously involved through their representative organisations.

This is in line with General Comment No. 7 of the CRPD Committee, in the design, adoption, implementation and monitoring of laws, policies and programmes aimed at promoting equality.

6) The EU and its Member States should collect, analyse and disseminate disaggregated data and research information.

This is important in order to identify inequalities and discriminatory practices, and analyse the effectiveness of measures promoting equality.

7) Broad awareness-raising on equality and the rights of persons with disabilities should be provided, in particular training on the concept of reasonable accommodation applicable to all areas of life.

Examples of awareness-raising measures are the development of training for employers, teachers, healthcare and legal professionals, and the publication of handbooks.

8) Legal aid, legal actions 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 justice. Equality bodies should receive the mandate, independence and necessary resources to inform and assist individuals in their discrimination claims. EU Member States should pay particular attention to the [European Commission's 2018 Recommendation on standards for equality bodies](#).¹⁵⁸

¹⁵⁸ Commission Recommendation of 22.6.2018 on standards for equality bodies available here: https://ec.europa.eu/info/sites/info/files/2_en_act_part1_v4.pdf.



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