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Speakers' presentations

DISABILITY AND NON-DISCRIMINATION IN THE EUROPEAN UNION

**SEMINAR FOR NATIONAL CIVIL SERVANTS AND STAFF OF
NGOs, DPOs AND EQUALITY BODIES**

Trier, 6-7 May 2019



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The UN Convention on the Rights of
Persons with Disabilities
dr Damjan Tatic



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The UN Convention on the Rights of Persons with
Disabilities
dr Damjan Tatic

- In December 2006 the UN General Assembly unanimously adopted Convention on the Rights of the Persons with Disabilities and the Optional Protocol to it.
- Both treaties entered in force in May 2008.
- The Convention has been ratified or acceded to by 177 state parties.

The UN Convention on the Rights of Persons with
Disabilities

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- It is the first global human rights treaty adopted under the auspices of the United Nations that has been ratified by a regional international organisation, the European Union.
- The Optional Protocol to the Convention on the Rights of the Persons with Disabilities has been ratified or acceded to by 94 state parties.

The UN Convention on the Rights of Persons with
Disabilities

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- The purpose of the Convention is to „promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and foster respect for their inherent dignity“ (article 1).

The UN Convention on the Rights of Persons with Disabilities

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- The Convention is based on the following principles, put forth in article 3:
- (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;
- (g) Equality between men and women;
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities

The UN Convention on the Rights of Persons with Disabilities

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- The Convention on the Rights of the Persons with Disabilities reaffirms their
- right to life,
- protection in various situations of risk,
- equal recognition before the law (including full legal capacity),
- access to justice,

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Disabilities

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- liberty,
- freedom from torture and other degrading and inhumane treatment and punishment,
- protection from violence, abuse and exploitation,
- personal integrity,
- liberty of movement,

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Disabilities

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- nationality,
- freedom of expression and opinion,
- privacy,
- marriage and family life,
- education,
- employment,
- health care,

The UN Convention on the Rights of Persons with
Disabilities

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- social protection and adequate standard of living,
- participation in political life and conduct of public affairs,
- participation in culture, sports and leisure activities.
- It prescribes for the measures which state parties have to undertake in order to enable persons with disabilities to enjoy the above-mentioned rights effectively.

The UN Convention on the Rights of Persons with
Disabilities

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- *Articles 4 on general obligations of state parties to the Convention and 5 on equality and non-discrimination constitute the core of Convention on Rights of Persons with Disabilities.*
- Convention prescribes that state parties “undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability”

The UN Convention on the Rights of Persons with
Disabilities

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- Convention prescribes for mainstreaming of disability issues into general policies.
- It stresses the significance of training of professionals and staff working with persons with disabilities on the rights of those persons.
- Persons with disabilities have to be consulted through their representative organizations in development of policies and legislation necessary for implementation of the Convention

The UN Convention on the Rights of Persons with
Disabilities

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- Civic and political rights of persons with disabilities have to be implemented immediately, while social, economic and cultural rights will be implemented progressively and gradually, with the maximal use of the available resources
- Convention especially stresses the need for development, promotion, research and application of universal design, as a powerful tool to ensure accessibility of all newly designed and produced goods, objects, infrastructure, ICT systems.

The UN Convention on the Rights of Persons with
Disabilities

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- States Parties recognize that “all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law” (article 5, clause 1).
- States Parties shall “prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds” (article 5, clause 2).

The UN Convention on the Rights of Persons with
Disabilities

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- The Convention guarantees effective protection from any form of discrimination, including *denial of reasonable accomodation*, to all persons with disabilities.
- The Convention also addresses multiple, intersectional discrimination. Such a discrimination occurs when an individual belonging to different marginalised groups is being discriminated on different grounds that may interact.

The UN Convention on the Rights of Persons with
Disabilities

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- Convention specifically addresses situation of women with disabilities and children with disabilities explicitly, as well as disability- specific issues of
- accessibility,
- personal mobility,
- support services and
- habilitation and rehabilitation.

The UN Convention on the Rights of Persons with
Disabilities

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- *Articles 34 to 39 prescribe for setting up and functioning of Committee on the Rights of Persons with Disabilities.*
- State parties shall elect independent experts to the Committee, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.
- *State parties should submit periodic reports on implementation of the Convention to the Committee for the review.*

The UN Convention on the Rights of Persons with
Disabilities

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- Optional Protocol to the Convention provides for a possibility of submission of complaints to the Committee on the Rights of Persons with Disabilities in cases of violation of provisions of the Convention, once all national legal remedies had been exhausted.
- Committee can also investigate serious violations of the Convention in a particular state party. Still, aforementioned state has to make explicit consent to investigation, as well as lodging of complaints against it.

The UN Convention on the Rights of Persons with
Disabilities

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- The Committee on the Rights of Persons with Disabilities has reviewed 81 initial state party reports on implementation of the Convention, and issued recommendations and concluding observations to those states. In 2017 the Committee commenced reviewing second periodic reports under simplified reporting procedure, sending questions under list of issues to 21 state parties. Spain was first State to have its' second periodic report reviewed.

The UN Convention on the Rights of Persons with
Disabilities

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- Committee on the Rights of Persons with Disabilities has adopted 7 general comments, interpreting and giving guidance on proper implementation of particularly complex and significant provisions of the Convention on the Rights of Persons with Disabilities
- Under the Optional Protocol to Convention on the Rights of Persons with Disabilities, Committee has capacity to review individual communications. This is not a judicial review, its' decisions on such communications are not mandatory but states should implement Committee's recommendations in good faith in accordance with the principles of international public law. The Committee has reviewed 28 individual communications

The UN Convention on the Rights of Persons with
Disabilities

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- **Thank you kindly for
your time and
attention!**

The UNCRPD in EU law

*Seminar for National Civil Servants and Staff of NGOs, DPOs
and Equality Bodies: Trier, 6-7 May 2019*

Dr. Andrea Broderick

Assistant Professor, Maastricht University



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The principle of non-discrimination [on the basis of disability] has an established history in Europe and multiple practical results [...] although the application on the ground is diverse

Tymowski, J. (2016), The Employment Equality Directive: European Implementation Assessment, European Parliamentary Research Service

*EU disability law & the
legal status of the CRPD
in EU and national law*

*The CRPD's
conceptualisation of
disability and key non-
discrimination provisions*

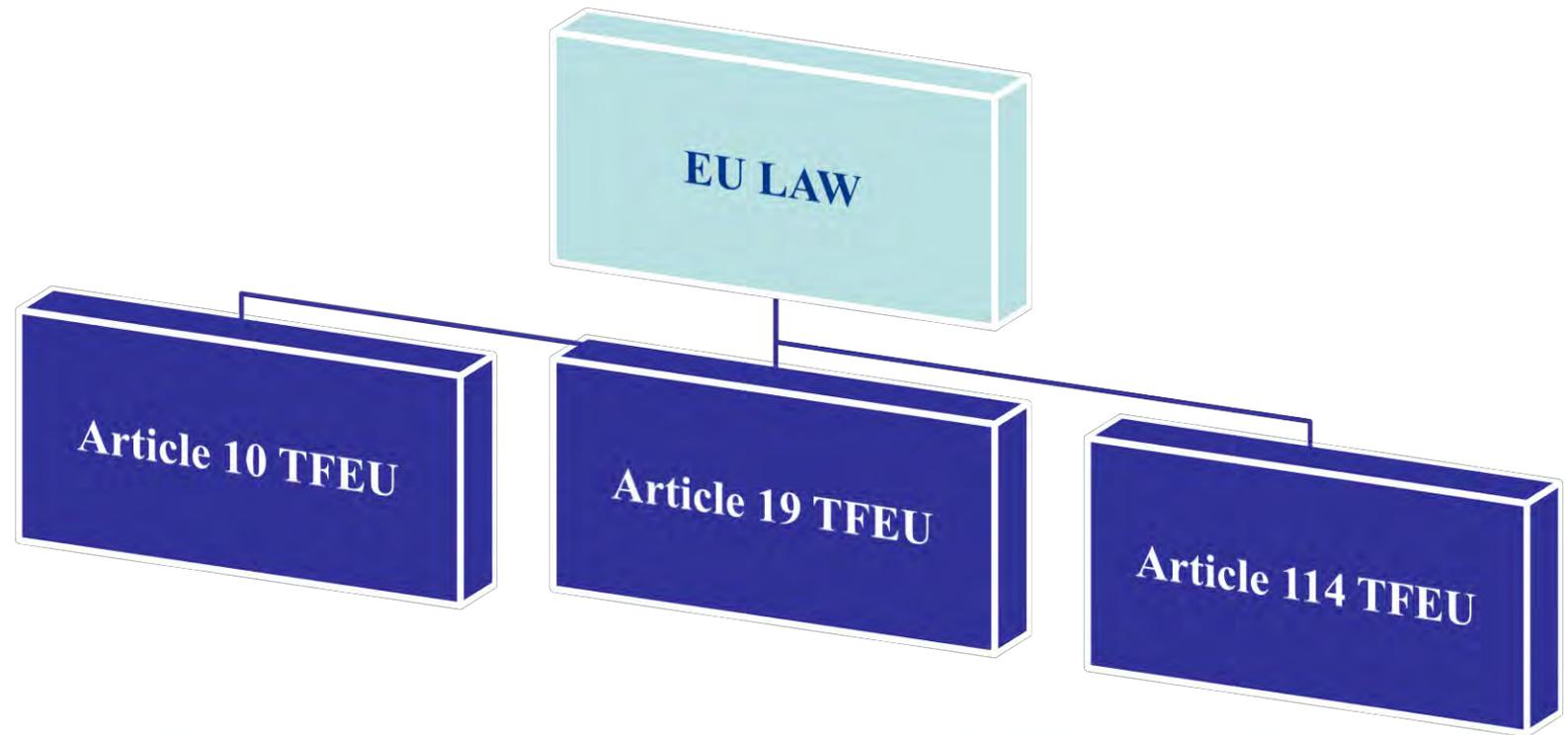
*A comparison between
EU law & the CRPD:
the definition of
'disability/reasonable
accommodation'*

*Conclusions: Impact of
the CRPD on EU law*

SECTION I:

EU Disability Law and the Legal Status of the CRPD in EU and National Law

The Constitutional Provisions that Empower the EU to Combat Discrimination



Secondary Legislation on Disability: Directive 2000/78

- The TFEU provisions prompted the adoption of, among other things, **two non discrimination directives** in 2000
- The most relevant directive for the purposes of disability is **Council Directive 2000/78/EC** (establishing a general framework for equal treatment in employment and occupation)
- Directive 2000/78 implements the principle of equal treatment in the area of employment and **prohibits discrimination on various grounds, including disability**

The Charter of Fundamental Rights of the EU

- The EU Charter of Fundamental Rights (EU CFR) became **binding in December 2009**, when the Lisbon Treaty came into force
- The EU CFR has the same legal value/status as the EU Treaties, but it does not expand the existing competences of the Union) that are laid down in the Treaties (including the competence of the EU to protect and promote the rights of people with disabilities): See Article 51 EU CFR and Case C-354/13, *Kaltoft*, paras. 36-39)
- **Article 21 of the EU CFR** enshrines the right to non-discrimination, including on the grounds of disability, and **Article 26** contains the right of persons with disabilities to benefit from measures for their independence, social and occupational integration and participation in the community

The Charter of Fundamental Rights of the EU

➤ Case C-356/12, *Wolfgang Glatzel v. Freistaat Bayern*: The principle enshrined in Article 26 EU CFR does not require the EU legislature to adopt any specific measure. In order for that article to be fully effective, it must be given more specific expression in European Union or national law. Accordingly, that article cannot by itself confer on individuals a subjective right which they may invoke as such [...]

➤ This means that it is intended to guide the EU institutions when they legislate but that it does not oblige them to act and is not directly enforceable

The Conclusion of the CRPD: A Mixed Agreement

❖ In December 2010, the EU concluded (ratified) the CRPD: Council Decision 2010/48/EC

The UN Convention is a “mixed agreement”: an international agreement covering fields in which both the EU and the Member States have competence to act

Disability equality and combating discrimination is an area of shared competence

Status of the CRPD in EU Law

➤ According to **Article 216(2) TFEU**, international agreements concluded by the EU are binding for EU institutions as well as for EU Member States

As a general rule, international agreements properly concluded by the Community prevail over EC secondary law and national provisions

The CRPD ‘enjoys a quasi-constitutional status in EU law, beneath the Treaties but above secondary law’ (*Favalli and Ferri, 2016*). The CJEU must take the CRPD into account when interpreting EU secondary legislation

❖ Once included in the EU legal order, international agreements are subject to the judicial control of the CJEU, which has held that the CRPD forms an ‘integral part of EU Law’ (*HK Danmark, Cases C-335/11 & C-337/11, para. 30*)

Legal Status of the CRPD in Domestic Legal Orders

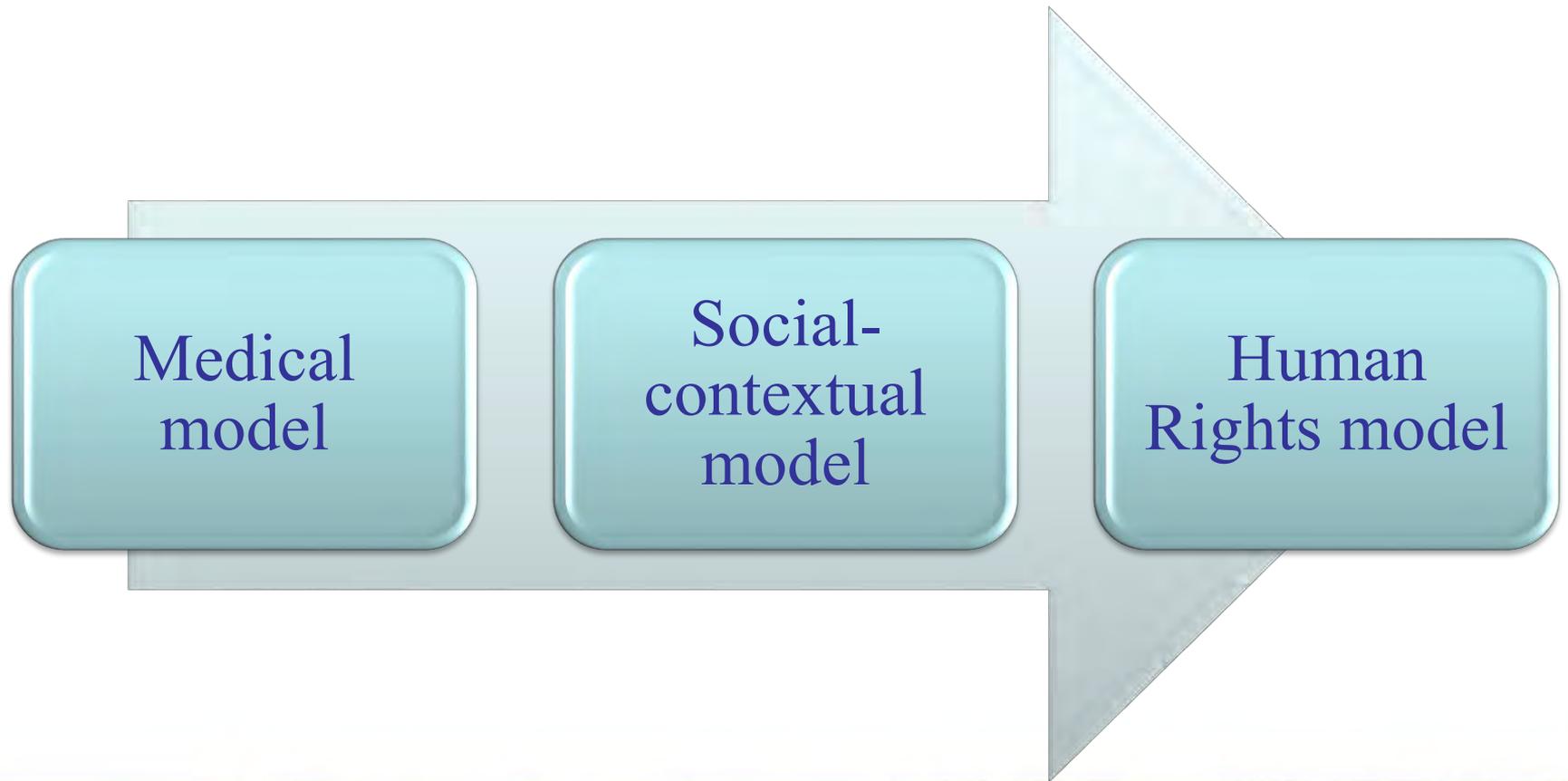
- The legal status of international treaties in the domestic legal order is a question of national constitutional law
- Domestic courts appear to be giving the CRPD ‘indirect interpretative effect’
- The CRPD is sometimes being used to overturn or radically reinterpret previous case law or legal doctrine; to fill gaps in domestic law; to resolve ambiguities in domestic law; or to bolster or support other legal authorities (*Waddington and Lawson, 2018*)

SECTION 2:

The CRPD: Conceptualisation of Disability and Key Non-discrimination Provisions



Models of Disability: The 'Paradigm Shift'



Medical Model to the Social-contextual Model

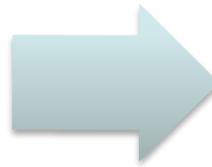
- The medical model focused on the actual impairment or functional limitation and attempts to ‘cure’ the person with a disability so that he/she could fit in with the ‘norm’
- The social-contextual model recognises that disability stems from the interaction between people with impairments and barriers in society

Human Rights Model

- The human rights model recognises disability as a ‘social construct’
- It acknowledges the fact that persons with disabilities are holders of rights on an equal basis with others and that they are not objects of charity
- It recognises that ‘disability is one of several layers of identity’ (*General Comment No. 6; Degener, 2017*)

Recital (e) of the CRPD Preamble:

- Disability is an evolving concept that results from the **interaction between** persons with **impairments** and attitudinal and environmental **barriers** that hinders their full and effective **participation in society** on an equal basis with others



Article 1 of the CRPD:

- Persons with disabilities include those who have **long-term** physical, mental, intellectual or sensory **impairments**, which in **interaction with various barriers** may hinder their full and effective **participation in society** on an equal basis with others

The Prohibition of Disability-Based Discrimination in the CRPD: Article 2 CRPD

➤ Article 2 CRPD: "Discrimination on the basis of disability" means:

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. It includes *all forms of discrimination, including denial of reasonable accommodation*

The Duty of Reasonable Accommodation

- Article 5(3): States Parties are required to ensure that reasonable accommodation is provided
- Article 2 CRPD defines ‘reasonable accommodation’ as entailing:

*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*

SECTION 3:

Comparison of EU Law and the CRPD:

*The Concepts of 'Disability' and
'Reasonable Accommodation'*

The Concept/Definition of ‘Disability’ under EU Law

- Directive 2000/78 prohibits discrimination on the ground of disability, but it does not define the concept of ‘disability’
- This has led to a number of preliminary references to the CJEU seeking guidance on how to interpret the concept of ‘disability’
- The question arises as to whether the CJEU’s definition of ‘disability’ is compatible with the CRPD (*see Waddington, 2015, 2016 and 2017; see also Lourenço/Pohjankoskiin, 2018; and Waddington and Broderick, 2018*)

Main CJEU Case Law on Disability

Chen Navas v Eurest Colectividades SA: C-13/05

Coleman v Attridge Law (2008): 303/06

HK Danmark (Ring and Skouboe Werge): C-335/11 and C-337/11.

Glatzel v Freistaat Bayern: C-356/12

Z v A Government Department and the Board of Management of a Community School: C-363/12

Kaltoft v. Kommunernes Landsforening: C-354/13

Daouidi v Bootes Plus SL and Others: C-395/15

Milkova: C-406/15

Ruis Conejero: C-270-16

Chacón Navas, C-13/05

- The Court defined ‘disability’ under the Employment Equality Directive as:
‘a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life’
- For any limitation to be regarded as a ‘disability’, ‘it must be probable that it will last for a long time’ (para. 45)
- The Court also held that for the purposes of the Directive, ‘disability’ is different from ‘sickness’, and there was nothing in the Directive ‘to suggest that workers are protected by the prohibition of discrimination on grounds of disability as soon as they develop any type of sickness’ (para. 46)

Remarks on n Navas, C-13/05

- The definition of disability developed by the Court in *Chacón Navas* was based on the medical model
- According to the Court's definition, the cause of the disadvantage encountered by the disabled person was the 'impairment', and it was the impairment that hindered participation in working life
- Therefore, the Court ruled that the 'problem' lay with the impaired individual, not with societal structures

HK Danmark (Ring and Skouboe Werge), Case C-335/11 and Case C-337/11

- The Court held that the concept of ‘disability’ must be understood as:

“a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers”

Remarks on HK Danmark (Ring and Skouboe Werge)

- The CJEU held that, given the primacy of international agreements over instruments of EU secondary law, such law must be interpreted, as far as possible, in a way that is consistent with international agreements (para. 28)
- The Court cited preamble. recital e) and Article 1 CRPD in developing its definition of ‘disability’
- The CJEU definitely moved away from the medical model in this case, but it is debatable whether the Court embraces the social-contextual model embraced by the CRPD (*Waddington, 2015; Waddington and Broderick, 2018*)
- Concerns remain regarding the application of the definition of ‘disability’ in practice

Kaltoft v. Kommunernes Landsforening (2015), Case C-354/13

- *Kaltoft* sought to establish, *inter alia*, whether obesity can be deemed to fall within the definition of ‘disability’ under the Employment Equality Directive.
- The Court held that obesity constitutes a disability within the context of the Directive, where it satisfies the definition laid out in *HK Danmark*: ***a limitation resulting from an impairment which, in interaction with other barriers, hinders participation in professional life***
- In *Kaltoft*, the Court gave some examples of relevant limitations applicable in the context of obesity: if the obesity of the worker hindered that participation on account of reduced mobility or the onset of medical conditions preventing that person from carrying out work (para. 60)

Remarks on Kaltoft, Case C-354/13

- On the one hand, it is positive that the CJEU expanded its approach to disability rights to (potentially) include obesity
- On the other hand, by requiring that a person must experience a limitation resulting from their impairment, this may serve to exclude certain types of discriminatory practices, such as, stereotypes, prejudicial attitudes (*Waddington, 2015; Waddington and Broderick, 2018*)
- This appears to represent a move away from the CRPD's human rights model (*Schiek, 2015; Waddington, 2015; Waddington and Broderick, 2018*)

Z v. A Government department, Case C-363/12

- The CJEU affirmed the importance of an interpretation of the Directive that is compatible with the CRPD and restated its definition of ‘disability’ set out in *HK Danmark*
- The Court held that, although Ms. Z had a recognised limitation resulting from her impairment (the inability to conceive a child naturally), this did not amount to a disability for the purposes of the Directive, because it did not impact on her ability to work
- Thus, the Court denied Ms. Z employment-related benefits

Remarks on Z v. A Government department, Case C-363/12

- The CJEU's definition of 'disability' is narrower than that in the CRPD
- The CRPD refers to impairments, which in interaction with various barriers may hinder full and effective participation **in society generally**, rather than only in professional life
- The CJEU's narrow approach leads to individuals being denied employment-related benefits that would normally be covered by the Directive on the ground that they do not meet the definition of 'disability' adopted by the Court (*Waddington, 2015*)

Mohamed Daouidi v Bootes Plus SL, Case C-395/15

- The CJEU's definition of 'disability' requires that the relevant impairment be 'long-term', indicating that both permanent and long-lasting conditions are covered
- In *Daouidi*, the CJEU provided guidance, stating that a limitation may be deemed "long term" if the incapacity of the person concerned does not display a 'clearly defined prognosis as regards short-term progress or the fact that that incapacity is likely to be significantly prolonged before that person has recovered' (paras. 56/57)
- The CJEU placed emphasis on 'objective evidence': 'documents and certificates relating to that person's condition, established on the basis of current medical and scientific knowledge and data' (para. 57).

Remarks on Mohamed Daouidi v Bootes, Case C-395/15

- The Court adopted a narrow medical view regarding the types of evidence that should be provided in order to demonstrate that an individual is entitled to protection under the Directive
- Individuals have to show their capacity level
- It may be difficult for claimants to provide such evidence, particularly those with psychosocial disabilities (*Waddington, 2017*)
- Difficulty for courts to assess the so-called ‘objective evidence’ (*Waddington, 2017*)

Reasonable Accommodation: EU law and the CRPD

CRPD:

The CRPD and the CRPD Committee clearly define an unjustified failure to provide a reasonable accommodation as a form of discrimination (*sui-generis*)

EU law:

Article 5 of the Directive 2000/78 simply sets out an obligation to provide reasonable accommodation (although see the 2008 proposal for a new non-discrimination directive)

The CJEU has not commented on the classification of the reasonable accommodation duty, although it did have the opportunity to do so in *HK Danmark (Ring and Skouboe Werge)*

Reasonable Accommodation: EU law and the CRPD

The CRPD:

The CRPD Committee has clearly stated that the ‘reasonableness’ of an accommodation is not to be assessed with regard to costs and that the cost issue falls under the disproportionate/undue burden defence. Instead, the reasonableness of an accommodation is ‘a reference to its relevance, appropriateness and effectiveness for the person with a disability’ (General Comment No. 6, para. 25(a))

EU law:

By way of contrast, the Court of Justice does consider the concept of ‘reasonableness’ under the cost heading (*HK Danmark*, para. 58)

➤ Several EU Member States also follow this approach – the CJEU should ensure consistency with the CRPD Committee’s interpretation of the duty of reasonable accommodation

SECTION 4:

*Concluding Remarks: Impact of the CRPD
on EU Law*

Impact of the CRPD on EU Law

- The CRPD has had quite considerable impact on the interpretation of EU law by the CJEU
- The impact is most evident with regard to the concept/definition of ‘disability’, and there is some evidence of a social model approach
- However, there are still concerns regarding the application in practice of the CJEU’s definition of ‘disability’

Impact of the CRPD on EU Law

- The CRPD is driving wide-ranging policy and legislative changes in EU Member States
- The proposed non-discrimination directive has been subject to a number of revisions in light of the EU's ratification of the CRPD in 2010
- In its *Concluding Observations on the EU's initial report*, the CJEU has recommended that:
 - ❖ The EU should adopt the proposed directive on equal treatment, extending protection against discrimination to persons with disabilities, including by the provision of reasonable accommodation in the areas covered by that directive

Selected Sources

- Broderick A. and Ferri D. (in press, 2019), *International and European disability law and policy: text, cases and materials* (Cambridge University Press).
- Broderick (2019), ‘Ruiz Conejero: (Re-)conceptualizing disability-based discrimination and sickness absence at work’ *International Labour Law Journal*.
- Broderick, A. (2015) *The Long and Winding Road to Equality and Inclusion for Persons with Disabilities: The United Nations Convention on the Rights of Persons with Disabilities*, (Intersentia).
- Committee on the Rights of Persons with Disabilities, General Comment No. 6 (2018), UN Doc. CRPD/C/GC/6.
- Degener, T. (2017), ‘A New Human Rights Model of Disability’, In: Della Fina V., Cera R., and Palmisano G. (eds.), *The United Nations Convention on the Rights of Persons with Disabilities: A commentary* (Springer Publications).

Selected Sources

- Favalli, S. and Ferri, D. (2016), ‘Defining disability in the European Union non-discrimination legislation: Judicial activism and legislative restraints’ 22(3) *European Public Law* 548.
- Ferri D. (2010), ‘The Conclusion of the UN Convention on the Rights of Persons with Disabilities by the EC/EU: A Constitutional Perspective’, in Waddington L. and Quinn G. (eds.), *European Yearbook of Disability Law*, volume 2 (Antwerp-Portland: Intersentia).
- Lawson, A. (2009), ‘The UN Convention on the Rights of Persons with Disabilities and European Disability Law: A Catalyst for Cohesion’, In: *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Brill).
- Lourenço, L. and Pohjankoskiin, P. (2018), ‘Breaking Down Barriers? The Judicial Interpretation of “Disability” and “Reasonable Accommodation” in EU Anti-Discrimination Law’ in Belavusau, U. and Henrard, K. (eds.), *EU Anti-Discrimination Law Beyond Gender*, (Hart).
- Mabbett, D. (2015), ‘Some are More Equal Than Others: Definitions of Disability in Social Policy and Discrimination Law in Europe’ 34(2) *Journal on Social Policy* 215.

Selected Sources

- Schiek, D. (2016), ‘Intersectionality and the Notion of Disability in EU Discrimination Law’ 53(1) *Common Market Law Review* 35.
- Waddington L. and Lawson A. (2018), *The UN Convention on the Rights of Persons with Disabilities, A Comparative Analysis of the Role of Courts*, (Oxford University Press).
- Waddington L. and Broderick A. (2018), *Combating Disability Discrimination and Realising Equality* (European Commission).
- Waddington, L. (2018), ‘The Influence of the UN Convention on the Rights of Persons with Disabilities on EU Non-Discrimination Law’, in Belavusau, U. and Henrard, K., *EU Anti-Discrimination Law Beyond Gender*, (Hart).
- Waddington L. (2017), ‘Case note on Case C-395/15 *Daouidi*’, *EHRC* 2.
- Waddington, L. (2015), ‘Saying all the right things and still getting it wrong: The Court of Justice’s definition of disability and non-discrimination law’, *Maastricht Journal of European and Comparative Law*, 22(4).

THANK YOU FOR YOUR ATTENTION

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National Law Strategies for Combating Discrimination on the Ground of Disability

Trier, 6-7 May 2019

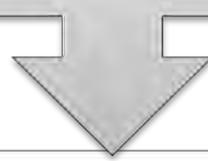
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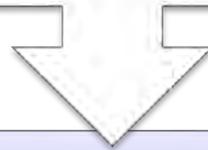


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Key CRPD obligations on non-discrimination



National law non-discrimination strategies



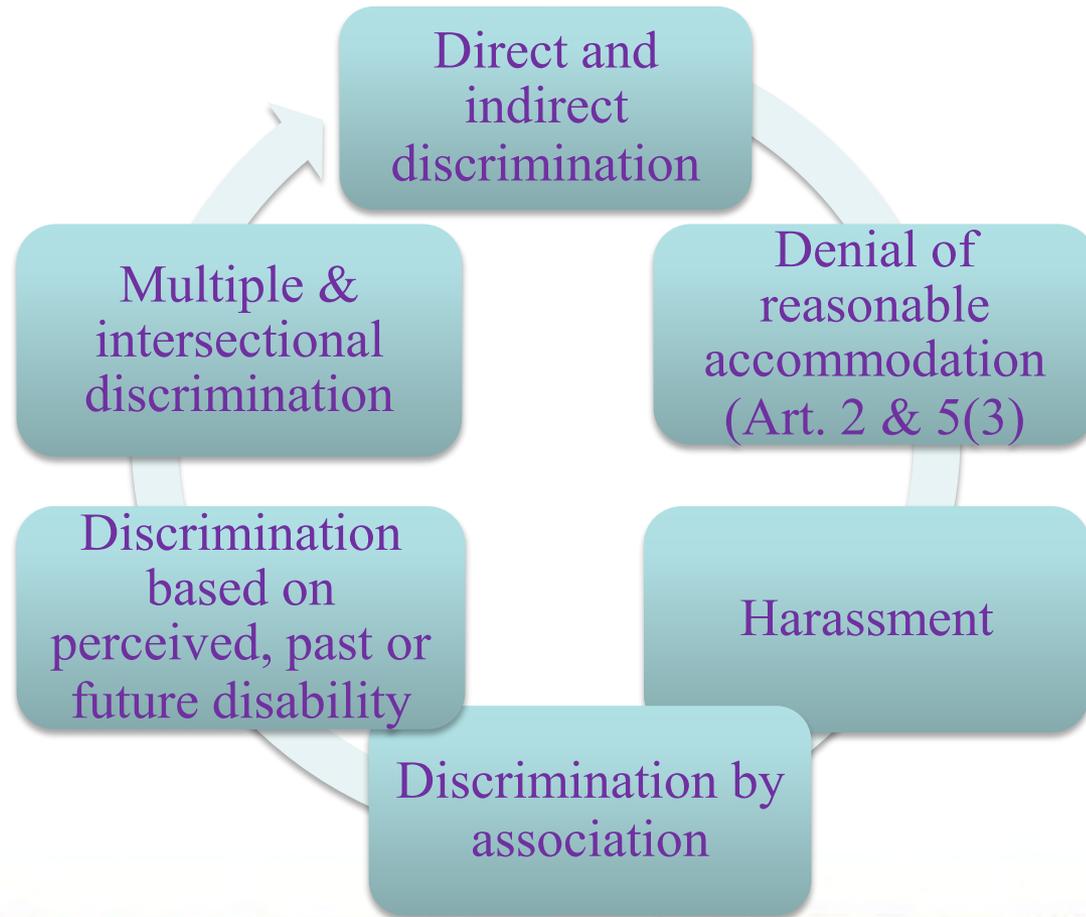
Case study

Introduction to CRPD Obligations

- **Article 4 (1)(b) and (e) CRPD** requires States Parties to repeal any legislation, customs and practices that constitute discrimination; and to take all appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise
- **Under Article 5 CRPD**, States Parties must adopt robust anti-discrimination legal frameworks prohibiting **all forms** of discrimination on the basis of disability **across all fields**
- In line with the CRPD, States Parties should include disability as a ground of discrimination in **civil, administrative, criminal and procedural law**
- **Constitutional provisions** constitute a useful tool for protecting persons with disabilities against discrimination (*UN Doc. A.71/314*)

Article 5(2) CRPD:

Duty to Prohibit all Forms of Disability Discrimination



Reasonable Accommodation Duty & Limitations

- **Article 5(3) CRPD:** denial of reasonable accommodation is a form of discrimination
- The reasonable accommodation duty is an individualised response to the individual needs of a disabled person in a particular situation, to ensure equal opportunities
- The duty-bearer is not required to provide an accommodation where such accommodation would result in a disproportionate or undue burden
- States should not only ensure the provision of accommodation in line with the Convention, but they should also allocate sufficient earmarked funds for that purpose and train public officials to ensure effective implementation of the duty (*UN Doc. A.71/314*)

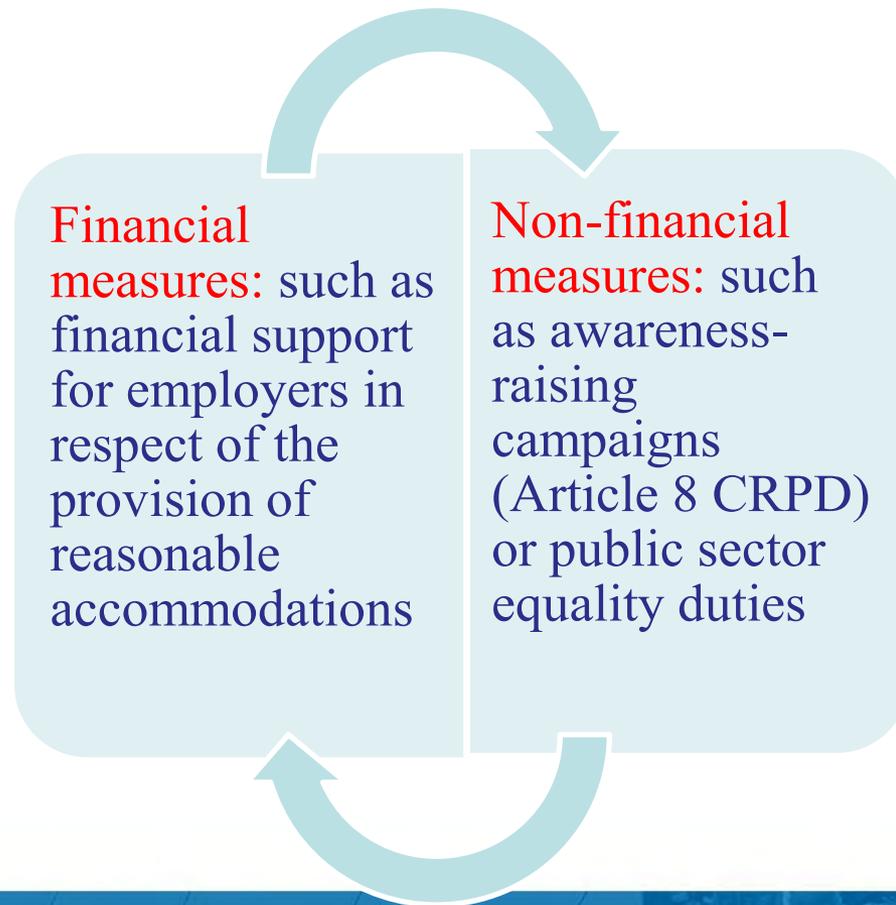
Duty to Provide Effective Legal Protection against Discrimination

- **Article 5(2) CRPD:** Effective redress mechanisms and sanctions must be established in respect of cases of discrimination, and mechanisms must be provided to support people with disabilities in taking their claim
- Judicial remedies should complement the work of national human rights institutions and equality bodies (*UN Doc. A.71/314*)
- All barriers (environmental, legal, attitudinal and structural) in accessing justice must be removed
- Lawyers, judges and agents of justice should be targeted in capacity-building efforts to ensure their understanding of the human rights-based approach to disability

Obligation to adopt Positive Action

- **Article 5(4) of the CRPD** permits the adoption of positive action, with a view to correcting for past discrimination and achieving, or accelerating, equality in fact between people with disabilities and others
- Employment quotas are used widely in the context of persons with disabilities in several EU Member States (for example: Hungary, Belgium, France, Germany, Poland, Italy, Romania, and Austria). In some countries fines are applied if quotas are not met (for example: Germany, Slovenia, Slovakia, Romania, Austria and Poland)
- In the absence of human rights-based public policies oriented to combating the structural disadvantages faced by persons with disabilities, the impact of positive action will be insufficient to prompt a change towards more inclusive societies (*UN Doc. A.71/314*)

Obligation to adopt other Positive Measures



National Law Strategies: Compulsory Cooperation Agreements

In Belgium: A compulsory Cooperation Agreement was agreed on by the relevant public authorities in order to set out a common understanding of the duty of reasonable accommodation. The Agreement also establishes a monitoring mechanism, requiring each authority to collect information on reasonable accommodation and examples of best practice. (*Waddington and Broderick, 2017*)

National Law Strategies: Targeting Multiple/Intersectional Discrimination

Bulgaria

- In Bulgaria, the Protection Against Discrimination Act prohibits
- multiple discrimination

Austria

- The Austrian disability non-discrimination legislation provides that in assessing the amount of damages, relevance of the adverse effect of multiple discrimination has to be taken into account (*Waddington and Broderick, 2017*)

Sweden

- The Equality Ombudsman in Sweden addresses intersectional issues at the preliminary stage of case analysis (*European Network of Legal Experts in Gender Equality and Non-discrimination, 2018*)

National Law Strategies: Assistance in Litigating Disability Claims

In Malta: associations, organisations and trade unions are entitled to act on behalf of or in support of a victim of discrimination and have legal standing in court for this purpose. The National Commission for Persons with Disability (NCPD) is also empowered by law to provide legal and financial assistance to an alleged victim of disability discrimination. (*Waddington and Broderick, 2017*)

National Law Strategies: Stakeholder Engagement

Good Practice

In Croatia, the relevant legislation requires the People's Ombudsman to consult with a wide range of stakeholders in preparing its annual report and in forming recommendations and opinions.

(European Network of Legal Experts in Gender Equality and Non-discrimination, (2018))

National Law Strategies: Positive Measures

Finland

- In **Finland**, the Non-Discrimination Act (1325/2014)⁶¹ obliges employers who employ more than 30 people to take steps to foster equality. This “equality duty” also applies to public authorities & private sector entities which exercise public power or perform public administrative tasks & providers of education

Italy

- A project entitled “Diversity at work” (*diversitalavoro*) was launched in **Italy** in 2008 (*Waddington and Broderick, 2017*)

Estonia

- In **Estonia**, the Labour Market Services and Benefits Act provides for the compensation of employers for between 50 and 100% of the cost of making necessary adaptations to workplaces (*Waddington and Broderick, 2017*)

National Law Strategies: Good Practice Awards

In Germany: the Federal Anti-Discrimination Agency (FADA) and the Commissioner for Matters relating to Disabled Persons worked together with relevant stakeholders in 2013, to present good practice awards to companies integrating people with disabilities and chronically ill persons in an exemplary manner (*Waddington and Broderick, 2017*)

National Law Strategies: Equality Schemes

Public authorities in **Northern Ireland** must publish an equality scheme that includes the following: internal arrangements for implementing the duty; how they will assess and consult on the likely impact of their policies; and a monitoring arrangement for any future negative impact of their policies.

(European Network of Legal Experts in Gender Equality and Non-discrimination, (2018))

Checklist for Ensuring Equality

- ❖ Does the constitution contain a non-discrimination or equality clause that refers to disability?
- ❖ Is the achievement of equality/non-discrimination mainstreamed across a wide range of legal and policy areas?
- ❖ Is there non-discrimination legislation in place which prohibits disability discrimination across several fields and protects against different forms of discrimination?
- ❖ Does the law include a prohibition against multiple and intersectional discrimination?
- ❖ Is there coordination between various levels of government when legislating?

(Waddington and Broderick, 2017)



Checklist for Ensuring Equality

- ❖ Is discrimination and inequality of persons with disabilities monitored and is (empirical) data collected, disaggregated per type of disability?
- ❖ Do the monitoring structures foster the active involvement of persons with disabilities?
- ❖ Are positive measures, including financial measures, such as support to offset the cost of reasonable accommodations and other disability-related adaptations, available?
- ❖ Are other positive measures, such as non-financial measures, including awareness-raising measures, adopted?
- ❖ Do public authorities support awareness-raising activities?

(Waddington and Broderick, 2017)



Selected Sources

- Broderick A (2015), *The long and winding road to equality and inclusion for persons with disabilities: The United Nations Convention on the Rights of Persons with Disabilities*, Cambridge/Antwerp: Intersentia.
- European Network of Legal Experts in Gender Equality and Non-discrimination (2018), *Equality Bodies Making a Difference*.
- Equinet (2014), *Positive Action Measures: The Experience of Equality Bodies*.
- Office of the United Nations High Commissioner for Human Rights (December 2010), 'Equality and non-discrimination under Article 5 of the Convention on the Rights of Persons with Disabilities', UN Doc. A/HRC/34/26.
- Report of the Special Rapporteur of the Human Rights Council on the rights of persons with disabilities, Catalina Devandas-Aguilar (2016), UN Doc. A.71/314.
- Waddington L. and Broderick A (2017), *Promoting Equality and Non-discrimination for Persons with Disabilities* (Council of Europe).

THANK YOU FOR YOUR ATTENTION

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CENTRE FOR EUROPEAN SOCIAL & ECONOMIC POLICY ASBL

Disability and Non-discrimination in the EU

6-7 May 2019

Stefanos GRAMMENOS

Economist

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CENTRE FOR EUROPEAN SOCIAL & ECONOMIC POLICY ASBL

Statistics and data collection about persons with disabilities

1. Article 31 of the UNCRPD: Statistics and data collection

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention
2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.

2. National & EU initiatives on how to collect, analyse and report information on disability

2

STATISTICAL INDICATORS: WHY?

Elaboration of quantitative indicators for persons with and without disabilities

1. Identify problems/Gaps
2. Highlight the issue / the evolution
3. Sensitize policy makers
4. Favour policy measures
5. Monitor & Assess policies

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3

TARGET GROUP

UN CONVENTION & WHO CONCEPTS (ICIDH)

UN CONVENTION

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in **interaction** with various **barriers** may hinder their full and effective participation in society on an equal basis with others.

International Classification of Impairments, Disabilities, and Handicaps (WHO 1980)

A manual of classification relating to the consequences of disease



Medical model (disability is a result of a disease)

The concepts of impairment have been used in Health surveys (national & European)

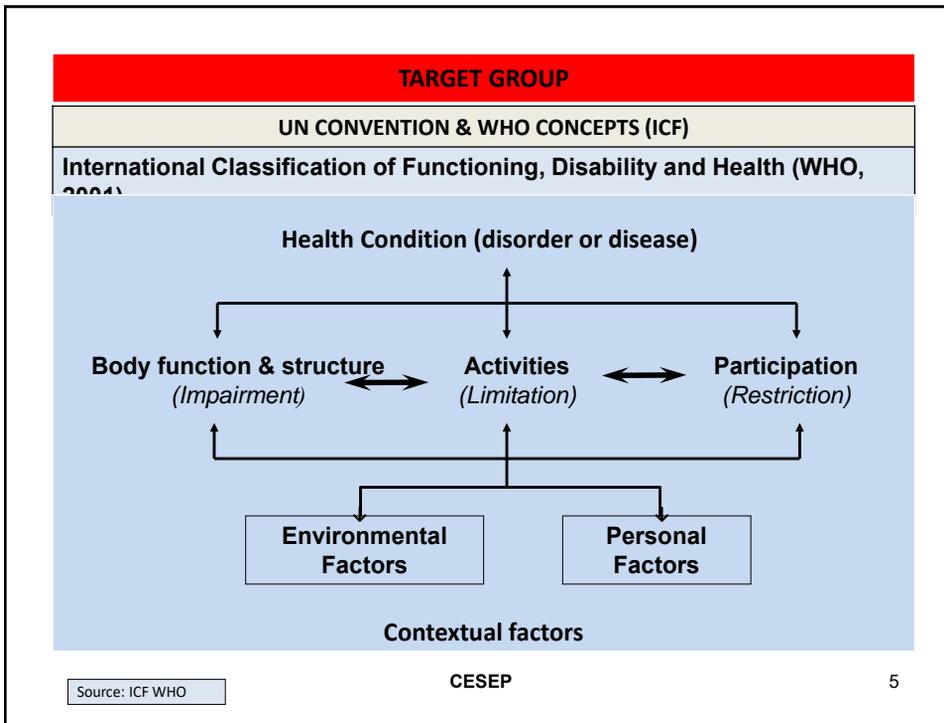
The ICIDH has inspired certain national Disability surveys (France, Spain, ...)

Recently, efforts are displayed to use instruments based on the ICF (social model: Barriers)

Source: ICIDH WHO

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- (MAIN) STATISTICAL PROXIES OF PEOPLE WITH DISABILITIES**
- 1. Global activity limitation indicator (GALI)** (ex. EU-SILC, EHIS, ...)

For at least the past six months, to what extent have you been *limited* because of a health problem *in activities* people usually do?
 - 2. The Washington group proposes two instruments** (ex. modified version in EHIS, ...)

 - 1. The Short Set on Functioning (WG-SS)**

“The next questions ask about *difficulties* you may have doing certain activities because of a HEALTH PROBLEM”. The set covers six core functional domains: seeing, hearing, walking, cognition (remembering, concentrating), self-care, and communication (language) “difficulties”.
 - 2. Extended Set (WG-ES):** 11 domains, 25 questions
 - 3. Work limitations** (ex. LFS, ...)

Limitations in work caused by health problems/difficulties in basic activities
 - 4. Minority approach** (Special Eurobarometer 2015 on Discrimination)

Where you live, do you consider yourself to be part of a *minority* in terms of disability?
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(MAIN) STATISTICAL PROXIES OF PEOPLE WITH DISABILITIES

5. Persons recognized / registered

1. Persons receiving disability benefits

Administrative registers (Macroeconomic issues)
(ex. Eurostat: ESSPROS: European System of integrated Social PROtection Statistics)

2. Special Educational Needs (SEN)

Ministries of Education (Education policy for children with disabilities)

6. Barriers

The European Health and Social Integration Survey (EHSIS - 2015) aimed to measure the biopsychosocial model of disability introduced by the ICF. **People with disabilities are those who face barriers to participation** in any of 10 life areas (employment, education, transport, access buildings, etc.), associated inter alia with a health problem or basic activity limitation.

Disability is a multidimensional phenomenon
Each proxy measures a specific dimension of disability
Choose the relevant proxy depending on the purpose / objectives

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MINIMUM EUROPEAN HEALTH MODULE (MEHM)

It is a set of three general questions characterizing three different concepts:

•**Self-perceived health** as the self-assessment of a person's own health in general: Question: "How is your health in general? Is it..." with answer categories Very good / Good / Fair / Bad / Very bad;

•**Chronic morbidity** as the presence of long-standing health problems: Question: "Do you have any longstanding illness or health problem?" Yes / No;

•**Activity limitations** as the presence of long-standing activity limitation due to health problems measured via the Global Activity Limitation Indicator (GALI):

Question: "For at least the past 6 months, to what extent have you been limited because of a health problem in activities people usually do? Would you say you have been ..." with answer categories "severely limited / limited but not severely or / not limited at all?".

The module was developed to be used in all social surveys and is at present implemented in the [European Health Interview Survey \(EHIS\)](#) and [EU](#)

Source: Eurostat - EUSILC [me and Living Conditions \(EU-SILC\)](#)

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MODIFIED WASHINGTON GROUP QUESTIONS

Health surveys often use the term “difficulty” (for functional limitations, e.g. EHIS):

1. Do you have difficulty **seeing** even when wearing your glasses or contact lenses?
2. Do you have difficulty **hearing** what is said in a conversation with one other person **in a quiet room**, even when using your hearing aid?
3. Do you have difficulty **hearing** what is said in a conversation with one other person **in a noisier room**, even when using your hearing aid?
4. Do you have difficulty **walking half a km** on level ground that would be [...] without the use of any aid?
5. Do you have difficulty **walking up or down 12 steps**?
6. Over the last 2 weeks, how often have you been bothered by any of the following problems: **Trouble concentrating on things**, such as reading the newspaper or watching television.

For difficulties, the possible answers are 1. No difficulty, 2. Some difficulty, 3. A lot of difficulty and 4. Cannot do at all / Unable to do.

In the case of trouble concentrating, the survey adopts the following cut points: 1. Not at all; 2. Several days; 3. More than half the days and 4. Nearly every day.

Source: Eurostat - EHIS

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LIMITATIONS OF SURVEYS

1. **Often persons in institutions are excluded from general surveys**
Examples of Disability surveys covering Persons in institutions:
FR: Les personnes accueillies dans les établissements et services médico-sociaux pour enfants ou adultes handicapés en 2014: Enquête ES-Handicap 2014
ES: Survey on Disability, Personal autonomy and Dependency situations 2008. Survey aimed at Centers
2. **Young persons are excluded from general surveys** (but the EU-SILC ad hoc module 2017 includes children). The definition of disability might be different for children.
3. **Survey questions rely on self-assessment. Registers report “recognized” persons with disabilities** (meeting national disability assessment criteria).
4. **Problems related to cross-national comparisons**
5. **Stigma** (under-reporting)
6. **Cost** (limited funding favours short questions, ex. GALL, which implies no info on the nature of disability)

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NATIONAL INITIATIVES CONCERNING UNCRPD ARTICLE 31

Examples of national strategies

1. AUSTRIA

National Action Plan on Disability 2012-2020 concerning statistics:

1. Participating at the uniform and systematic data collection of the **European Union** (Eurostat) on the situation of people with disabilities;
2. Periodical analysis of **EU-SILC** data with a focus on people with disabilities;
3. Development of an appropriate modus to ask for disabilities in statistic data collections;
4. Contract for a survey 'People with Disabilities in Austria'

2. DENMARK

Disability equality indicators

The Danish Institute for Human Rights has developed a set of Gold Indicators, covering the ten most important articles of the CRPD: independent living (influence on their lives), education, health, employment, mobility (report problems), discrimination (% reporting), political participation (% voted)... Report every fourth year. The Gold Indicators have been developed with relevant national stakeholders, including national ministries, State authorities and disability organisations. Identify the most relevant **Sustainable Development Goals** (SDGs) priority Indicators which correspond best with the Gold Indicators. Certain are included in **Europe 2020**.

Source: ANED

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NATIONAL INITIATIVES CONCERNING UNCRPD ARTICLE 31

Examples of national strategies

3. NETHERLANDS

The Netherlands Institute for Human Rights developed, together with representatives of NGOs and research agencies, a limited set of quantitative and qualitative indicators on three themes: **independent living, education and work**. The Institute commissioned the Central Bureau of Statistics ...

4. PORTUGAL

The Observatory of Disability and Human Rights (ODDH) published the first report 'Persons with Disabilities in Portugal – Human Rights Indicators 2017'. This report sought to systematise information on the situation of persons with disabilities in Portugal, **using existing national and international data sources**, in order to draw indicators to measure the progress made in the fulfilment of human rights of persons with disabilities in Portugal.

5. SWEDEN

The Public Employment Services reports each year the results of an annual survey on the labour market situation of persons with disabilities. They use the **Labour Force Survey** (LFS) with additional questions.

Source: ANED

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THE EUROPEAN APPROACH

Eurostat proposed the inclusion of GALL into the IESS in order to meet the obligations relating to the **UNCRPD Article 31** and the provision of the **European Disability Strategy 2010-2020**. Proposes a periodic inclusion (not every year, except in EU-SILC)

EU surveys	Domains of IESS (Integrated European Social Statistics)
1. Labour Force Survey (LFS) (Quarterly)	1. Labour market, 2. Income and living conditions, 3. Health, 4. Education and training, 5. Use of information and communication technologies, 6. Time use, 7. Consumption.
2. European Statistics on Income and Living Conditions (EU-SILC) (Annual)	
3. European Health Interview Survey (EHIS) (2008, 2014, 2019)	
4. Adult Education Survey (AES) (2007, 2011, 2016)	
5. Survey on Information and Communications Technologies (ICT) (Annual)	
6. Harmonized European Time Use Survey (HETUS) (Wave 2000, Wave 2010)	
7. Household Budget Survey (HBS) (2010, 2015)	

Source: Eurostat

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WHICH STATISTICAL INDICATORS?

1. UN CRPD Articles / Policy themes

2. EUROPE 2020 Indicators

FUTURE MONITORING INSTRUMENTS

1. EUROPEAN PILLAR OF SOCIAL RIGHTS: Social Scoreboard

The European Pillar of Social Rights is supported by a scoreboard of key indicators to screen employment and social performances of participating MS. **The scoreboard covers 12 policy areas and 12 Headline indicators.**

2. INDICATORS FOR MONITORING THE SUSTAINABLE DEVELOPMENT GOALS (SDGS)

At the UN Sustainable Development Summit held in September 2015: the World leaders adopted the document "Transforming our world: the 2030 Agenda for Sustainable Development". 17 Goals.

Eurostat proposes 99 indicators. About **30 concern persons with disabilities.**

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EXAMPLE OF STATISTICAL INDICATORS

EUROPE 2020		
Compare persons with and without disabilities		
1. Employment	1.	Employment rate by gender, age group 20-64
2. Education	2.1	Early leavers from education and training
	2.2	Tertiary educational attainment, age group 30-34
3. Poverty & Social exclusion	3.1	People at-risk-of-poverty or social exclusion (AROPE)
	3.2	People living in households with very low work intensity
	3.3	People at-risk-of-poverty after social transfers (<60%)
	3.4	Severely materially deprived people (>=4 over 9 items)

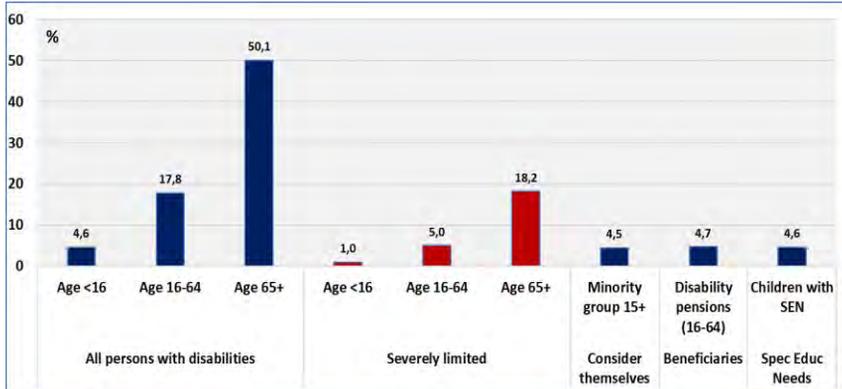
Certain indicators have been inserted into the Social Scoreboard and SDGs 2030

Source: Eurostat

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NUMBER OF PERSONS WITH DISABILITIES (ACTIVITY LIMITATIONS), EU



1. Persons with disabilities; age <16: 4.6%, age 16-64: 17.8%, age 65+: 50.1%; 2015 (except <16: 2017)
2. Persons with severe disabilities: age <16: 1.0%, age 16-64: 5.0%, age 65+: 18.2%; 2015 (<16: 2017)
3. About 4.5% consider themselves to be part of a minority in terms of disability and / or have personally having felt discriminated against or harassed on disability (Eurobarometer 2015, age: 15+).
4. About 4.7% receive a disability related pension (EU-SILC 2015, age: 16-64)
5. Pupils with Special Educational Needs: 4.6% of all pupils in compulsory education (2005/2006)

EU SILC UDB, Eurobarometer 2015 & Commission

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Right to personal mobility: Recast of the EU Regulation on Rail Passengers' Rights (1371/2007)

Marie Denninghaus, ERA, 7 May 2019



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EDF – Who are we?

- EU umbrella organisation representing persons with disabilities
- Interest representation: secretariat in Brussels
- 97 member organisations (National disability organisations, European NGOs)
- Main topics: Human rights, social policies, accessibility (transport, built environment, ICTs)
- “Nothing about us without us”



Rail accessibility for persons with disabilities in the EU

- Main legislative instruments:
 - Rail Accessibility Regulation (“TSI-PRM”) 1300/2014
 - Trans-European Networks Regulation (“TEN-T Guidelines”) 1315/2013
 - 4th Railway Package
 - [Rail Passengers’ Rights Regulation 1371/2007](#)

- Accessibility vs assistance

- Rail is one of the most regulated transport sectors on EU level but also has the longest legacy → many obstacles remain!

Current Rail Passengers’ Rights Regulation 1371/2007

Definition of “Person with reduced mobility” (Art. 3.15)

“disabled person’ or ‘person with reduced mobility’ means any person whose mobility when using transport is reduced due to any physical disability (sensory or locomotory, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or as a result of age, and whose situation needs appropriate attention and adaptation to his or her particular needs of the service made available to all passengers;

→ Same definition as in other PR Regulations

Rights given under the Regulation

- Right to transport and to buy tickets (Art. 19)
- Right to information about accessibility of services (Art. 20)
- Right to assistance at stations and on board (Art. 22 – 23)
- Right to compensation in respect of mobility equipment (Art. 25)



Provision of assistance

- As long as independent mobility is not reality, assistance is necessary
- At stations: Regulation obliges railway undertakings to assist with embarking/disembarking
- On board: “reasonable efforts” to allow passengers with disabilities to access same services as other passengers



Other non-PRM specific provisions

- Compensation in case of delay or cancellation
- Right to care
- Right to re-routing
- Right to information about your rights
- Complaints mechanism & enforcement (designated National Enforcement Bodies)

Problems with the current Regulation

- Too many exemptions (urban, suburban, regional services)
- Need to pre-notify assistance max. 48 h in advance
- Passenger needs to arrive max. 1 h in advance
- Assistance not available at all times when trains operate
- Indirect charge for booking assistance
- No obligation to provide accessible alternative transport in case of disruption
- No obligation to provide information in accessible formats
- No obligation for disability awareness training of staff

2018 Recast of the Regulation

Overview of timeline

- European Commission proposal for recast - September 2017
- European Parliament report - November 2018
- Council – no position yet, currently under discussion (General Approach expected under Finnish Presidency end 2019)
- Trialogues to start the earliest end 2019/beginning 2020



Commission proposal

Main purpose:

- Clarify situation in case of “Force majeure”
- Limit exemptions
- Strengthened rights of PRMs
- Strengthen enforcement and complaint handling
- Ban discrimination on grounds of nationality or residence
- Better information about passenger rights

Improvements for persons with disabilities

- No exemptions for disability-related provisions
- Availability of assistance during all times rail services operate
- Accessibility of information
- Re-routed and alternative transport services have to be accessible
- Possibility to travel with certified service animal
- Booking of assistance shall always be free of charge
- Obligation to train staff on disability issues

→ **Missing: Abolition or reduction of pre-notification time!**

European Parliament report

Built on EC proposal and added/improved some important provisions:

- Reduction of pre-notification time for large and medium size stations
- Accessible and easier complaint handling procedure
- Involvement of DPOs to improve services
- Strengthened and better defined National Enforcement Bodies' tasks and competences
- Accompanying person travels for free if no independent access is possible

Issues that remain to be discussed in Council

- Pre-notification: solution has to be found for small and unstaffed stations
- Persons with disabilities should be allowed to buy tickets on board the train at no extra cost if no ticket office or accessible means of purchasing the ticket is available at the station
- requirements for staff training should be more comprehensive and detailed; target group should be expanded (atm only staff that provide “direct assistance” to persons with disabilities)

Regulation 1371/2007 and UNCRPD Article 20

Article 20: Personal mobility

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

- a) Facilitating the personal mobility of persons with disabilities in the manner and at the **time of their choice, and at affordable cost**; ✓
- b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of **live assistance** and intermediaries, including by making them available at affordable cost; ✓
- c) Providing **training** in mobility skills to persons with disabilities and **to specialist staff working with persons with disabilities**; ✓
- d) Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.



Article 20: Personal mobility

Some aspects of Article 20 are covered by the Rail Passengers' Rights Regulation but can still be extended:

- Training to all staff, not just those that provide the direct service to PRMs
- Assistance at time of choice, not limited to certain working hours
- Improve the quality of boarding aids and other assistive devices

But most importantly:

Accessibility has to be improved so that the needs for assistance will become obsolete for most passengers!

Conclusion

- The recast of Regulation 1371/2007 has so far been positive for the rights of persons with disabilities
- Proposed changes by the Commission and Parliament would bring it closer to implementing Art. 20 UNCRPD, although not fully compliant
- Major issue that needs still to be agreed upon: pre-notification to book assistance
- Need for improvement of accessibility in order to have a real impact on peoples' lives

Thank you!



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Women with disabilities - violence against women with disabilities



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Outline

CRPD, General Comment no 3 (2016) on Art 6
CRPD

CRPD General Comment no 6 (2018) on Art 5
CRPD

CEDAW General Comment no 35 (2017) update
on GC 19

Concepts: intersectionality, equality, vulnerability,
empowerment, transformative or inclusive justice

Violence against women with disabilities,
prevention, victim support, access to justice

Pirkko Mahlamäki

Women and children with disabilities in CRPD

- Preamble: p, q, r, s,
- Art. 4 (3) • Art. 5 (2) • Art. 6 • Art. 7
- Art. 16 (1), (2), (4) • Art. 18 (2)
- Art 23 1 (c), 3, 4 and 5
- Art 25
- Art 28 2 (b)

Pirkko Mahlamäki

General Comment nr 3 (2016)

- Adopted on 26 August 2016 by the Committee on the Rights of Persons with Disabilities (CRPD Committee)
- Strong evidence to affirm that women and girls with disabilities face barriers in most areas of life. These barriers create situations of multiple and intersecting forms of discrimination against women and girls with disabilities

Pirkko Mahlamäki

particularly with regard to **equal access** to education, access to economic opportunities, access to social interaction, access to **justice and equal recognition** before the law, the ability to participate politically and **the ability to exercise control over their own lives** across a range of contexts

Pirkko Mahlamäki

- Focus on State obligations, but also part of prohibition of discrimination
- To be applied in conformity with CRPD, no reservations
- Barriers caused by disbelief when reporting sexual violence (par 17 (e))
- Training of professionals in justice sector (par. 26)

Pirkko Mahlamäki

Multiple and intersectional discrimination

Multiple discrimination encompasses those situations where a person can experience discrimination on two or more grounds.

Intersectional discrimination refers to a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable.

Pirkko Mahlamäki

Intersectionality

- Recognition of the concept in law
- Related to stereotyping see par. 8 GC 3
 - “Gender stereotypes can limit women’s capacity to develop their own abilities, pursue professional careers and make choices about their lives and life plans. Both hostile/negative and seemingly benign stereotypes can be harmful. Harmful gender stereotypes need to be recognized and addressed in order to promote gender equality.”

Pirkko Mahlamäki

Formal equality

Combat direct discrimination by treating persons in a similar situation similarly and persons in different situations differently, helps to combat negative stereotyping and prejudices, but it cannot offer solutions for the “dilemma of difference.”

Pirkko Mahlamäki.

Substantive and transformative equality

Substantive equality approach **seeks to address structural and indirect discrimination and takes into account power relations.**

Substantive equality acknowledges that the “dilemma of difference” requires both, ignoring and acknowledging differences among human beings, in order to achieve *de facto* equality.

Pirkko Mahlamäki

Inclusive equality

The Convention is based on this new model of equality, transformative or inclusive equality -> **GC 6**

A model that acknowledges that individuals, on a general basis, experience discrimination as members of a (or several) social group(s) and that these groups are not homogeneous.

Pirkko Mahlamäki,
Handikappforum rf.

Inclusive equality

11. Inclusive equality is a new model of equality developed throughout the Convention. It embraces a substantive model of equality and extends and elaborates on the content of equality in: (...)
(b) a recognition dimension to combat stigma, stereotyping, prejudice and violence and to recognize the dignity of human beings and their intersectionality; (...)

Pirkko Mahlamäki

Transformation to change

'transformative equality' -> need to change dominant rules that reaffirm exclusion and to go beyond the equal-different approach.

Pirkko Mahlamäki

Solutions

Non-discrimination measures need to target individuals as well as groups. The CRPD is the first human rights treaty to acknowledge explicitly intersectional discrimination

European case law following this change

CRPD provides not only independent normative structure but also interpretative framework for national judges.

Pirkko Mahlamäki

CEDAW Committee General Comment 35 (2017) update 19

Discrimination against women (Art 1
CEDAW) includes gender-based violence
..directed against a woman because
she is a woman or affects women
disproportionately', and,
as such, is a violation of their human rights.
GC para 7: goes beyond non discrimination
towards empowerment - interpretation tool

Pirkko Mahlamäki

Report of the Special Rapporteur on the rights of persons with
disabilities on sexual and reproductive health and rights of girls and
young women with disabilities (A/72/133)

VIOLENCE AGAINST WOMEN AND GIRLS WITH DISABILITIES

Pirkko Mahlamäki

Increased risk

Children with disabilities are almost four times more likely to experience violence than children without disabilities.

The risk is consistently higher in the case of deaf, blind and autistic girls, girls with psychosocial and intellectual disabilities and girls with multiple impairments.

Pirkko Mahlamäki

Challenges

Sexual assault is often underreported, even more so in cases of women with disabilities

“when, as survivors of sexual violence, they report the abuse or seek assistance or protection from judicial or law enforcement officials, their testimony, especially that of girls and women with intellectual disabilities, is generally not considered credible, and they are therefore disregarded as competent witnesses, resulting in perpetrators avoiding prosecution.”

Pirkko Mahlamäki

Barriers to access

Physical and communication barriers in the justice system hinder access to justice by girls and young women with disabilities and their ability to seek and obtain redress.

Lack of accessibility and reasonable and procedural accommodations, such as sign language interpretation, alternative forms of communication and support services that are age- and gender-sensitive.

Pirkko Mahlamäki

Stereotypes, prejudices

“Owing to prejudices and stereotypes, courts commonly discount the testimony of girls and young women with disabilities in sexual assault cases,

questioning whether girls and young women with intellectual disabilities can understand the oath when testifying to discrediting the testimony of blind witnesses because they are not “able” to know/perceive the sequence of events”

Pirkko Mahlamäki

Health Care: Section IV under B

FAMILY PLANNING AND BIRTH CONTROL

Pirkko Mahlamäki.

- Relation to respect for dignity, agency and legal capacity GC 3 para 45: Forced contraception and sterilization can result in sexual violence.
- Par 18 CEDAW GC 28: Violations of sexual and reproductive rights may amount to torture or inhuman treatment.
- Supported decision making: right to be provided with assistance to raise children

Pirkko Mahlamäki

Recommendations - Committee

- 1) combat multiple discrimination through repealing discriminatory laws, policies and practices that prevent women with disabilities from enjoying all the rights of the CRPD;
- 2) adopt appropriate laws, policies and actions to ensure the rights of women with disabilities are included in all policies;

Pirkko Mahlamäki

Recommendations contd.

- 3) remove all barriers that prevent or restrict the participation of women with disabilities and ensure that women with disabilities, through their representative organisations, are included in the design, implementation and monitoring of all programmes which have an impact on their lives;

Pirkko Mahlamäki

- policy making with a gender perspective;
- awareness raising and training of professionals;
- accessibility (e.g. shelters, emergency numbers)
- reasonable accommodation;
- access to justice including also a gender perspective and procedural accommodation;
- provision of effective remedies

Pirkko Mahlamäki

Thank you kindly for your
time and attention!

Ms Pirkko Mahlamäki

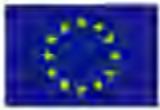
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Pirkko Mahlamäki



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Children with disabilities

The right to inclusive education

Disability and Non-discrimination in the European Union
Seminar for National Civil Servants and Staff of NGOs, DPOs
and Equality Bodies

Trier, 6 May 2019

Ignacio Campoy Cervera

Senior Lecturer

Institute of Human Rights “Bartolomé de las Casas”

University Carlos III of Madrid

Objectives and Methodology

Objective:

Analyse the main features of the rights of children with disabilities according with the human rights model and the meaning of the right to inclusive education.

Methodology:

Explain the basic ideas in relation with the rights of children with disabilities, in general, and with the right to inclusive education, specifically.

Discuss a case related with the right to inclusive education.

The main features of the rights of children with disabilities

The construction of a human rights model for children with disabilities rests on the CRC, of 1989, and the CRPD, of 2006

Before CRC:

The child, with or without disability, was recognized as the holder of some rights, but not of all.

The children's capacity to act, to freely exercise their rights, was not recognized at all.

The main idea is that the society, mainly the parents, has to protect the children due to their incapacities to do by themselves.

Children with disabilities suffer that system in a maximum degree.

The main features of the rights of children with disabilities

The Committee on the Rights of the Child has identified four general principles in the CRC:

Article 2: the right to not be discriminated. With the first explicit mention of disability as forbidden criteria for discrimination.

Article 3.1: the protection of the best interest of the child.

Article 6: the States Parties have to guarantee the survival and development of children as far as possible.

Article 12.1: the right to express their own views freely in all matters affecting them.

The main features of the rights of children with disabilities

Article 23 CRC is the one dedicated specifically to children with disabilities.

In Art. 23 CRC it is assumed that “disabled children” due to their special helplessness, produced by their disabilities, need special protection and, consequently, they must be subject to greater limitations than other children in the recognition and exercise of their rights.

However, that vision of children with (and without) disabilities and their rights has totally changed with the evolution on the understanding of children rights and the incorporation of the social-human rights model to the rights of persons with disabilities with the CRPD.

The main features of the rights of children with disabilities

According with **the evolution on the understanding of children rights**

Is essential the new interpretation of both principles- rights of Arts 3.1 and 12.1 CRC

Both principles have different grounds.

The best interests has older roots and is grounded on the protection of the children.

The right to express their own views freely in all matters affecting them is grounded on the recognition of their autonomy and evolving capacities to exercise their rights.

Anyhow, for the Committee on the Rights of the Child: the best interest states the objective to fulfil and article 12 establishes the way to achieve it.

The main features of the rights of children with disabilities

According with **the evolution on the understanding of children rights**

The right to participate in all decision makings affecting them is linked with the system of human rights, because the main idea of the human rights model is that people, exercising their rights according with their will and preferences can achieve the full development of their own personalities.

The best interest of the child (and of every person) must be understanding as the full development of the own personality and the exercising of the rights according with their will and preferences.

General Comment No. 14 CRC, par. 4 : “[...] The concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child[...].”

The main features of the rights of children with disabilities

According with the CRPD

Article 7 is the one dedicated to children with disabilities.

There is an explicit connection between both Conventions, CRC and CRPD.

Specifically, between Article 2 CRC and Article 7.1 CRPD, Article 3.1 and Article 7.2 2 CRPD and Article 12.1 CRC and Article 7.3 CRPD.

The main features of the rights of children with disabilities

Art. 7.1 CRPD: “States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children”.

It establishes that States must ensure that disability will never be an impediment for all children to enjoy, on an equal basis, their human rights and fundamental freedoms.

The mandate is more demanding for States, which have to take “all necessary measures” to ensure the “full enjoyment” of all human rights, implying the obligation to respect, protect and fulfil the rights of all children with disabilities.

The main features of the rights of children with disabilities

Art. 7.2 CRPD: “In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration”.

Therefore, we have to understand that there is no special best interests for children with disabilities, because they are children, so we cannot build a system of special protection for special needs of special children.

The main features of the rights of children with disabilities

Art. 7.3 CRPD: “States Parties shall 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 realize that right”.

Therefore, it is explicitly established:

Firstly, every child has the right to participate, it does not matter his/her age or maturity.

Secondly, in order to evaluate the participation of children with disabilities we have to attend to the same criteria that must be used for any child: age and maturity. That is to say, that the possibility of taking into account the criteria of disability is explicitly excluded.

And thirdly, it is mandatory to provide the appropriate assistance to the children in order to ensure the effective realization of their rights. In fact, we are faced here with what is surely the key element to fulfil the obligation for children with disabilities to exercise all their rights on an equal basis with other children, and that is the need to remove existing barriers and ensure universal access to children with disabilities.

The main features of the rights of children with disabilities

Main ideas to bear in mind:

Disability can by no means be considered any longer a reason to deny or limit the enjoyment of human rights and fundamental freedoms.

Children with disabilities, as children that they are, have the same rights that children without disabilities.

Only due to the special barriers with which we construct our societies, they cannot exercise their rights on an equal conditions of other children.

There is an obligation to identify these barriers and remove them in order to allow that they can exercise their rights in an inclusive society, on an equal basis with others.

The main features of the rights of children with disabilities

Main ideas to bear in mind:

The human rights model of CRC and CRPD obliges to assist children with disabilities in order to make it possible the exercise of their rights for themselves, according with their will and preferences, in the maximum possible extent.

When the child can not exercise his/her right, due to the lack of maturity of the child, the parents or the third person who is going to exercise the right, have to give participation to the child and exercise the right according with what it can be considered that would be the will and preferences of the child if he/she would have the required maturity.

The meaning of the right to inclusive education

What are the main objectives of the right to education:

Universal Declaration of Human Rights (1948). Art. 26.2: “Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms[...]”

Convention on the Rights of the Child (1989). Art. 29: “1. States Parties agree that the education of the child shall be directed to: (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations[...]”

Convention on the Rights of Persons with Disabilities (2006). Article 24: “1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to: a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity; b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential[...]”

The meaning of the right to inclusive education

Two main questions:

Which education is the one that best guarantees the attainment of those objectives of education?

Which education is the one that best respect the rights of children with (and without) disabilities?

The meaning of the right to inclusive education

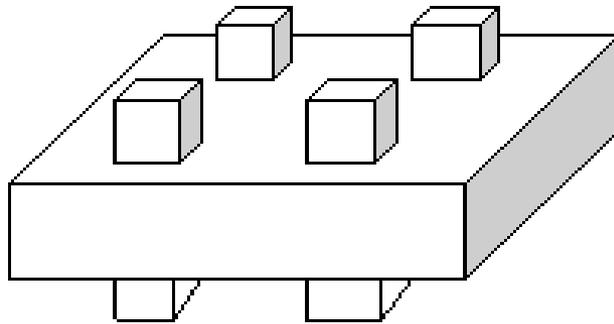
Segregated education

Par. 11 GC No 4 CRPD: “[...] Segregation occurs when the education of students with disabilities is provided in separate environments designed or used to respond to a particular or various impairments, in isolation from students without disabilities[...]”.

This model is according with the model previous to the CRPD and the evolution in the understanding of CRC on children with disabilities rights .

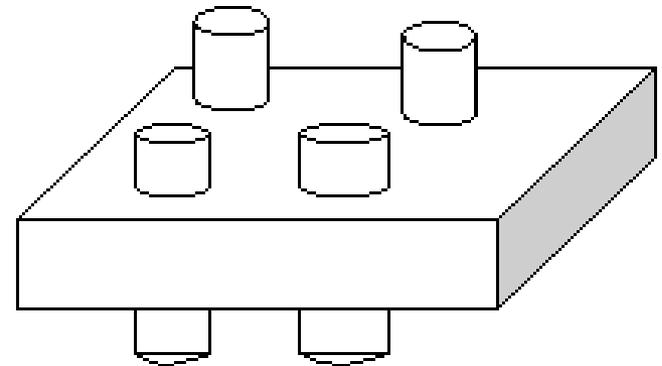
The meaning of the right to inclusive education

Special Education



Special child
Square pegs for square holes
Special teachers
Special schools

'Normal' Education



Normal child
Round pegs for round holes
Normal teachers
Normal schools

The meaning of the right to inclusive education

Integrated education

Par. 11 GC 4 CRPD: *“Integration is a process of placing persons with disabilities in existing mainstream educational institutions, as long as the former can adjust to the standardized requirements of such institutions”*.

This model is according with the model previous to the CRPD and the evolution in the understanding of CRC on children with disabilities rights .

The meaning of the right to inclusive education

Integrated Education

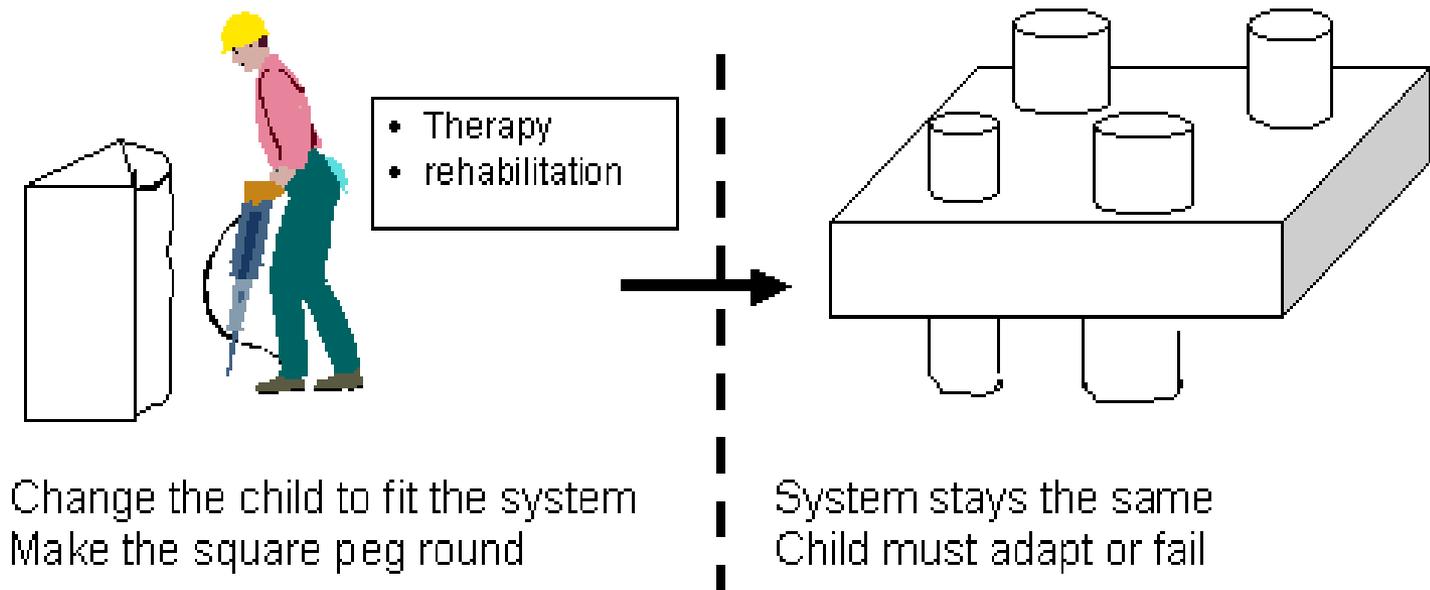


Image from *Enabling Inclusive Education: Challenges and Dilemmas*. Susie Miles, Enabling Education Network (EENET)

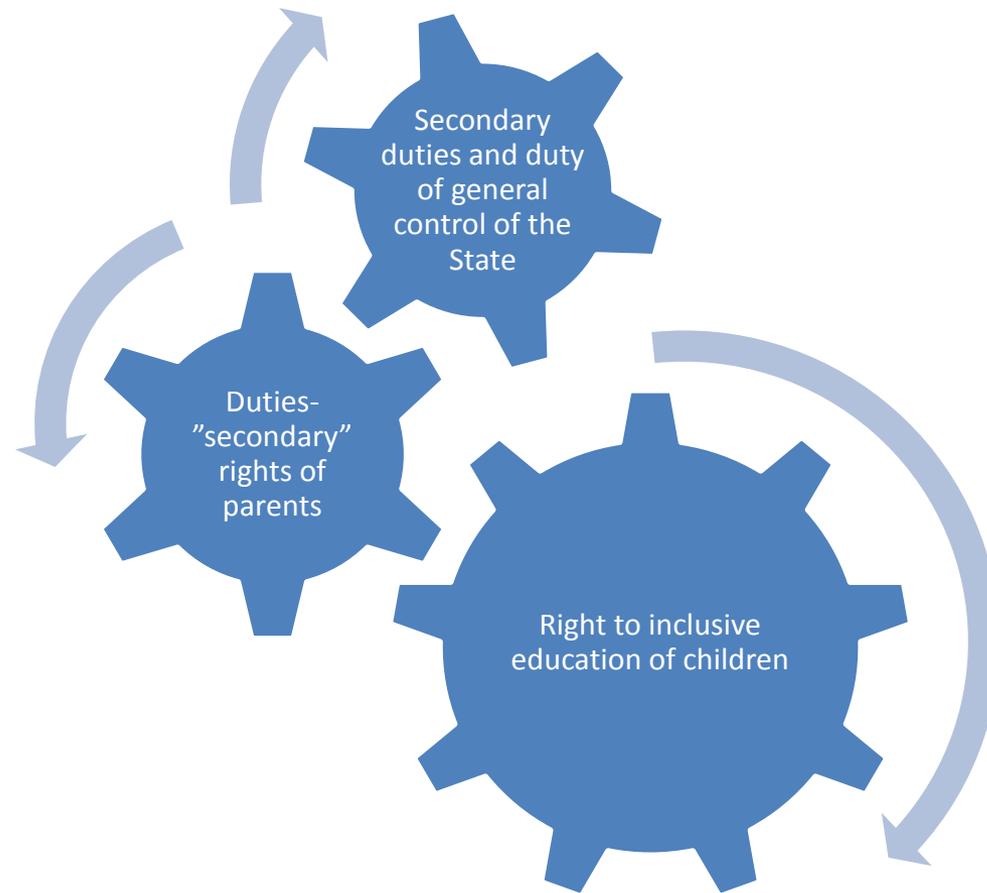
The meaning of the right to inclusive education

The right to inclusive education is the one that best guarantees the attainment of the objectives of the right to education and is according with the rights of children with (and without) disabilities articulated from the human rights model.

The right to inclusive education is a fundamental right of all children and each child.

Par. 10 a) GC 4 CRPD: ‘Inclusive education is to be understood as: a) A fundamental human right of all learners. Notably, education is the right of the individual learner, and not, in the case of children, the right of a parent or caregiver. Parental responsibilities in this regard are subordinate to the rights of the child’.

The meaning of the right to inclusive education



The meaning of the right to inclusive education

The right to inclusive education values the human diversity.

Par. 12 e) GC 4 CRPD: A core feature of inclusive education is “Respect for and value of diversity: All members of the learning community are welcomed equally, with respect for diversity according to, inter alia, disability, race, colour, sex, language, linguistic culture, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status. All students must feel valued, respected, included and listened to[...]”.

The meaning of the right to inclusive education

The right to inclusive education is the right of all children to receive education in the same educational system. Therefore, is not compatible with special education centers or spaces.

Par. 40 GC 4 CRPD: “[...] *Progressive realization means that States parties have a specific and continuing obligation “to move as expeditiously and effectively as possible” towards the full realization of article 24. This is not compatible with sustaining two systems of education: mainstream and special/ segregated education systems[...]*”.

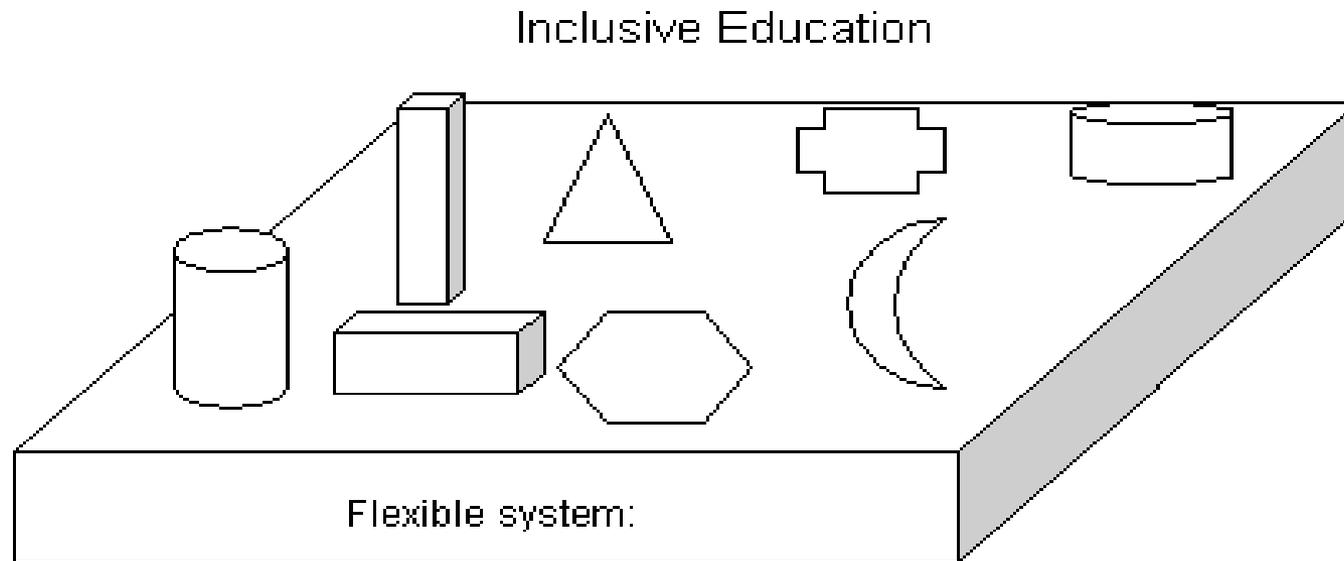
The meaning of the right to inclusive education

The right to inclusive education bases all the education system on the capacities, abilities, potentials and preferences of each child.

The exercise of the right to inclusive education implies universal design, universal accessibility, and, when necessary, reasonable accommodations.

Par. 11 GC 4 CRPD: “[...] Inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and environment that best corresponds to their requirements and preferences[...]”.

The meaning of the right to inclusive education



- Children are different
- All children can learn
- Different abilities, ethnic groups, size, age, background, gender
- Change the system to fit the child

Image from *Enabling Inclusive Education: Challenges and Dilemmas*. Susie Miles, Enabling Education Network (EENET)

Thank you very much



Disability and Non-discrimination in the European Union

Seminar for National Civil Servants and Staff of NGOs, DPOs and Equality Bodies

Trier, 6 May 2019

Ignacio Campoy Cervera

University Carlos III of Madrid

Case study

Children with disabilities. The right to an inclusive education

Methodology:

The participants will be divided in small groups. Each group, after reading the case, will consider the best justified answer to the following question:

Do you think than the right to an inclusive education have been respected in these case?

Each group will have 10-15 minutes to answer the question and after there will be a discussion, during 10-15 minutes, on the different answers, in a session with all participants together.

In October 2011, the educative Administration of Spain ruled that a boy with autistic spectrum disorder should be enrolled in a special education centre, because due to his disability he won't be able to attend in a mainstream school, where it was impossible that his special education needs could be properly met.

That decision was against the parents' will. The parents claimed that they had the right, recognized in ART. 24 CRPD (CRPD became part of the Spanish legal order on 3 May 2008, after having been ratified by the Spanish State and published in the Spanish Official State Bulletin), to choose the type of schooling for their child and they had decided that

the best for their child was to attend to a mainstream school with appropriate support to meet his educational needs, thereby exercising the right to inclusive education.

The parents sued the educative Administration, but finally the Constitutional Court upheld the administrative decision. According to the Constitutional Court, which took into account the CRPD -specifically Articles 2 and 24, in the Points of Law Fourth and Fifth of the Constitutional Court's Judgment 10/2014 of 27 January 2014-, "it appears as a general principle that education should be inclusive, i.e. should promote schooling of children in a centre of mainstream education, providing them the necessary supports for their integration into the educational system if they suffer from a disability. In short, the educative Administration should aim to inclusive education of disabled and only when the adjustments needed to make such inclusion would be disproportionate or unreasonable, it can be provided the schooling of these students in special education centres. In the latter case, out of respect for the fundamental rights and affected legal rights, under the terms stated above, that Administration shall externalize the reasons why it has continued this option, i.e. why it has agreed schooling the student in a special education center because of the integration of the disabled child in a mainstream school is unfeasible". And for the Constitutional Court the application of these principles and rights in the case in question supports the administrative decision, because "from the explanation given in this case by the educative Administration on the degree of disability of the child and the specific measures he requires (curricular adaptations at an age well below the normal course in an ordinary school, "individualized attention" in the classroom, which, moreover, must be reduced to "a maximum of 4 students", etc.), it follows naturally that the schooling of the child in a special education center adopted by that Administration cannot be considered as unreasonable or discriminatory, being consistent with the provisions of the Convention on the Rights of Persons with Disabilities (by reference to the provisions in Article 2 on the adjustments that should be adopted by the Administration that do not involve "disproportionate or undue burden"), and respects the criterion of the education Act, when specific in Article 74.1 that the schooling of persons with disabilities will only be made in special centres "when their needs cannot be met within the framework of the measures of attention to diversity in mainstream schools". Once the educational Administration has accredited the above, that is, that in the interest of the child his enrolment in a special education centre is the most suitable option, it is not necessary to evaluate whether the required accommodation may or may not be provided in a regular centre, because this enrolment decision implies, with regards to the severe disability of the student and the individualized attention he needs, that his singular educational needs are better met in a special education centre rather than in the framework of general education of the regular centres".

Challenges and obstacles to the political participation of persons with disabilities



Martha Stickings

Disability and non-discrimination in the EU

Trier, 7 May 2019



International and European standards

UN

- UDHR Art. 21
- ICCPR Art. 25
- CRPD Art. 29
- Concluding observations and general comments

CoE

- ECHR (Art 3. of Protocol No. 1)
- Council of Ministers recommendations
- Code of good practice in electoral matters
- ECtHR case law

EU

- CFR (Arts. 29 and 40)
- TEU Art 10
- TFEU Art 22
- Directives 93/109 and 94/80

Interest in politics

- Respondents with disabilities more interested in politics than general population
- Membership in political parties varies greatly depending on political traditions and social contexts
- Lack of comparative, reliable data



Legal barriers: key challenges

- Legal restrictions on right to vote and stand for election of people deprived of legal capacity
- Inaccessible and cumbersome administrative processes
- Difficulties accessing complaints mechanisms when facing problems in exercising the right to vote

5

Legal capacity and the participation spectrum



Exclusion: Denial to all people under partial and plenary guardianship, regardless of actual, individual level of functional ability

Limited participation: Exclusion hinges on the degree of limitation of legal capacity or evaluation on case by case basis

Participation: Persons with disabilities are allowed to vote and to be elected like all other citizens, legal capacity notwithstanding

6

Accessibility: key challenges

- Gaps in accessibility standards
 - Focus on persons with physical impairments
 - Lack of consistent criteria for accessibility
 - Unequal coverage across public and private sectors
- Lack of implementation of accessibility standards
 - Loopholes
 - Absence of reliable data

7

Civic participation: key challenges

- Lack of systematic involvement and consultation of DPOs
- Low numbers of persons with disabilities elected to public office

8

Awareness raising: key challenges

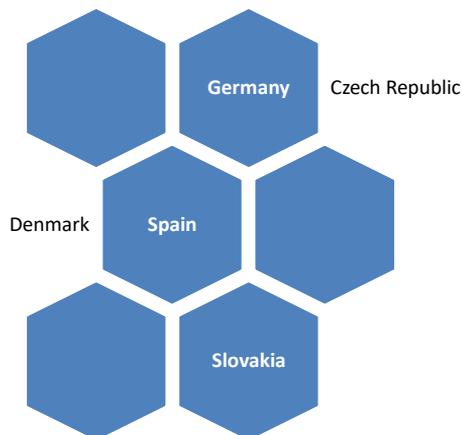
- Lack of training and awareness among key stakeholders
- Need for capacity building
- Absence of accessible information and campaign material



What has happened since 2014?

- Only 12 EU Member States do not restrict voting rights for people under guardianship
- Legal changes in four EU Member States have granted the right to vote to more people under guardianship...
- ...and more reforms are on the way elsewhere
- Some reforms do not remove all restrictions on the right to vote

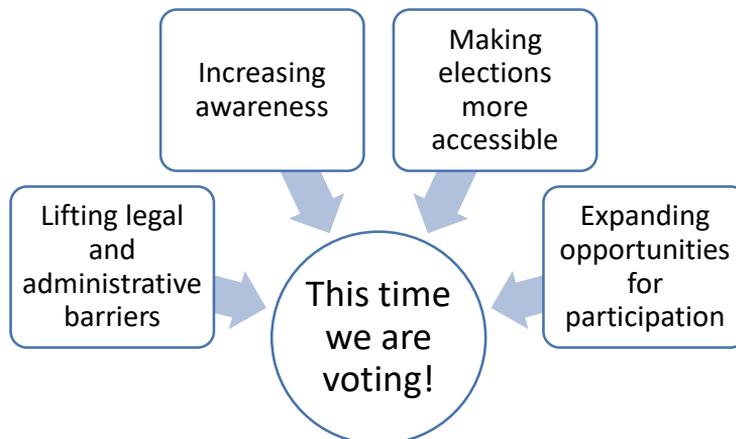
Courts play a key role



5 drivers of change



Opening up the 2019 elections





For more information, see:
[https://fra.europa.eu/en/publication/
2019/disability-voting-rights](https://fra.europa.eu/en/publication/2019/disability-voting-rights)

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Accessibility Requirements and the EU Public Procurement Regime of the European Union

Prof Christopher Bovis FRSA
University of Hull



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EU PUBLIC PROCUREMENT LEGAL FRAMEWORK

**Utilities
Directive
2014/25/EU**

**Public Sector
Directive
2014/24/EU**

**Concessions
Directive
2014/23/EU**

**Remedies
Directive
2007/66/EC**

Article 1 Public Sector Directive 2014/24/EU

Subject-matter and scope

SGEI and Public Services

- This Directive does not affect the freedom of Member States to define, in conformity with Union law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to. Equally, this Directive does not affect the decision of public authorities whether, how and to what extent they wish to perform public functions themselves pursuant to Article 14 TFEU and Protocol No 26.

UNCRPD Article 9 – Accessibility

Objectives

- Independent living
- Full participation in all aspects of life
- Equal treatment

Measures

- physical environment
- transportation
- information and communications systems
- public facilities and services

- **Accessibility to the physical environment, including buildings, is required by Article 9 of the CRPD.**
- **Article 9 (2) (a) highlights that one important way of making the physical environment accessible is to “develop, promulgate, and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public.”**

Public Services under EU Law

- **Art 106 TFEU =
the foundation of public services**
 - Public service obligations
 - Universal service obligations
 - Services of general economic interest
 - Social services of general interest

Public services as services of general interest

What is a (SGI)?

Protocol No 26 to the TFEU

The concept of SGI refers to services, whether 'economic' or not that the Member States regard as being of general interest, and are subject to specific public service obligations

- SGI cover:
 - services of general economic interest (SGEIs) [TFEU applicable]
 - non-economic services of general interest [TFEU not applicable]

The characteristics of public services

- Economic nature
 - Cost and value considerations
- Lack of industrial or commercial character
- Sui generis market place
 - Limited use of anti-trust
 - State aid regulation
 - Procurement as competition benchmark

The Conceptual premise of SGEI

Services of General Economic Interest

- Articles 14 and 106(2) TFEU
- Protocol No 26

Non-commercial nature *versus*

- Demand
- Frequency of supply
- Quality of service
- End user charges
- Profitability of operator

SGEIs

- “services of an economic nature that the public authorities in the Member States at national, regional or local level, depending on the allocation of powers between them under national law, subject to specific **public service obligations** through an act of entrustment on the basis of a general-interest criterion and in order to ensure that the services are provided under conditions which are not necessarily the same as prevailing market conditions”.
- **Examples of acts of entrustment**
 - Concession contract and tender documents
 - Ministerial programme contracts
 - Ministerial instructions
 - Laws and Acts
 - Yearly or multi-annual performance contracts
 - Legislative decrees, regulatory decisions, municipal decisions or acts.

The concept of social services of general interest (SSGI)

- SSGIs may be of an economic or non-economic nature
- SSGIs that are economic in nature are SGEIs
- health services
- statutory and complementary social security schemes
 - life assurance
 - health
 - ageing
 - occupational accidents
 - unemployment
 - retirement
 - disability

SSGIs

- other essential fundamental right services of social cohesion and social inclusion directly provided

assistance for persons faced by personal challenges or crises (debt, unemployment, drug addiction or family breakdown)

social integration activities (rehabilitation, language training for immigrants) and, in particular, return to the labour market (occupational training and reintegration).

services to integrate people with long-term health or disability problems.

social housing, housing for disadvantaged citizens or socially less advantaged groups.

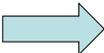
Public Service Obligations

- State financing not state aid
 - Art 14 TFEU
 - Art 106(2) TFEU
 - Altmark ruling

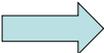
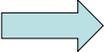
Case C-280/00 *Altmark* (2003)

- Public service license for regional transport services
- CJEU: PSO compensation without real financial advantage does not distort competition and is not aid if four conditions are met
 1. Entrusted with clearly defined public service obligations
 2. Parameters for compensation clearly defined in advance
 3. Compensation based on costs plus reasonable rate of return
 4. Selection by public tender or costs of efficient undertaking
- If met: no advantage → no aid
 - Compensation approach adopted
 - National courts may assess applicability of Altmark criteria

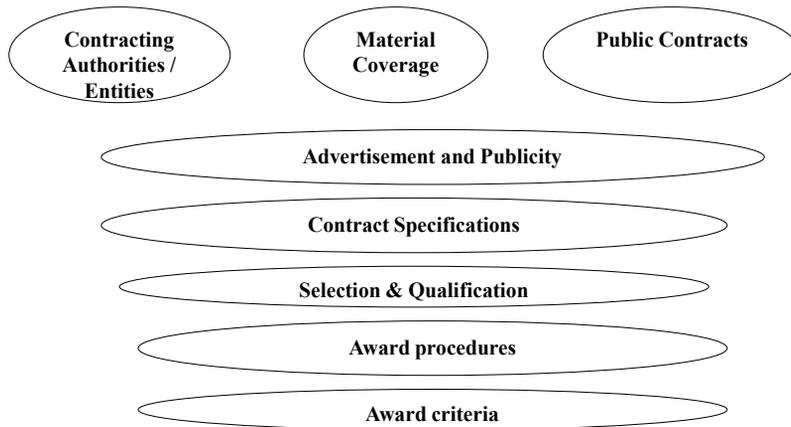
Intervention by the State

- Exclusive rights  shelters SGEI operator from competition
- Financial compensation  ensures service viability
- Definition of general rules  equalizes markets

SGEI: PSO Features

- Entrusted without competition  direct awards
- Subject to strict controls  future tendering restrictions
- Transparency requirements of public service contract  overcompensation

The Traction of EU Public Procurement Law



UNCRD Accessibility Requirements in the stages of EU Public Procurement Law

Article 20 Public Sector Directive 2014/24/EU

- Reserved contracts

- Member States may reserve the right to participate in public procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons or may provide for such contracts to be performed in the context of sheltered employment programmes, provided that at least 30 % of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.

Article 62 Public Sector Directive 2014/24/EU

- Quality assurance standards and environmental management standards

- Contracting authorities shall, where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures where the economic operator concerned had no possibility of obtaining such certificates within the relevant time limits for reasons that are not attributable to that economic operator provided that the economic operator proves that the proposed quality assurance measures comply with the required quality assurance standards.

Technical specifications & labels: Articles 40 – 42, Annex VIII

- *Technical specifications: Art. 40 clarified production process or if linked, other stage of life cycle;*
- *Labels:*
 - possible require label as such where label defined in transparent, objective process and all its requirements are suitable;
 - recognition equivalent labels and other means of proof where no access (art. 41(1))
 - Where all requirements are not suitable: i.e. underlying requirements (art. 41(2))
- *Third party certification (art. 42):*
 - may be required (technical specification, award criteria and/or contract performance);
 - mutual recognition re equivalent certificates;
 - Other means where no access

Technical Specifications: Article 42

- Technical specifications may be formulated in terms of performance or functional requirements
 - Functional requirements may include environmental characteristics
 - However, such parameters must be sufficiently precise
 - to allow tenderers to determine the subject-matter of the contract and
 - to allow contracting authorities to award the contract

Award Criteria: Article 67

- The economically most advantageous tender criterion includes
- various features **linked to the subject-matter of the public contract** in question, for example, **environmental characteristics or social considerations**
- **Inherent flexibility**
 - Opens the door for policy pursuits

Contract award criteria

- **Public Sector Directive: Sole award criterion: MEAT – most economically advantageous tender -**
to be assessed on the basis of
 - price, or
 - cost, **using a cost-effectiveness approach such as life-cycle costing,**
or
 - the best price-quality ratio (*BPQR*) ***to be assessed on the basis of award criteria linked to the subject-matter of the contract.***
 - **organisation, qualification and experience of the staff** delivering the contract **where this can significantly impact the level of performance of the contract**
- MS can exclude or restrict the use of price or cost only as sole criterion.

Contract performance: Article 70

Contracting authorities may lay down special conditions relating to the performance of a contract:

- Provided that these are compatible with EU law and are indicated in the contract notice or in the specifications
- The performance conditions may concern social and environmental considerations

Light regime

- New specific simplified rules for social, health, cultural and other services:
 - higher threshold – EUR 750 000;
 - below threshold: typically no-cross-border interest (except if EU funding)
 - only requirements: ex-ante (and ex-post) publicity + non-discrimination principle; for the rest national rules
 - MS may impose traditional MEAT (= BPQR) criterion only
- Other services covered
 - Hotel and restaurant services
 - Certain legal services
 - Rescue, fire fighting and prison services
 - Government services and services to the community

The European Disability Strategy 2010-2020

Adopted in 2010, builds on the UNCRPD and takes into account the experience of the Disability Action Plan (2004-2010).

Its objectives are pursued by actions in eight priority areas:

1. Accessibility : make goods and services accessible to people with disabilities and promote the market of assistive devices.

2. Participation : ensure that people with disabilities enjoy all benefits of EU citizenship; remove barriers to equal participation in public life and leisure activities; promote the provision of quality community-based services.

3. Equality : combat discrimination based on disability and promote equal opportunities.

4. Employment : raise significantly the share of persons with disabilities working in the open labour market. They represent one-sixth of the EU's overall working-age population, but their employment rate is comparatively low.

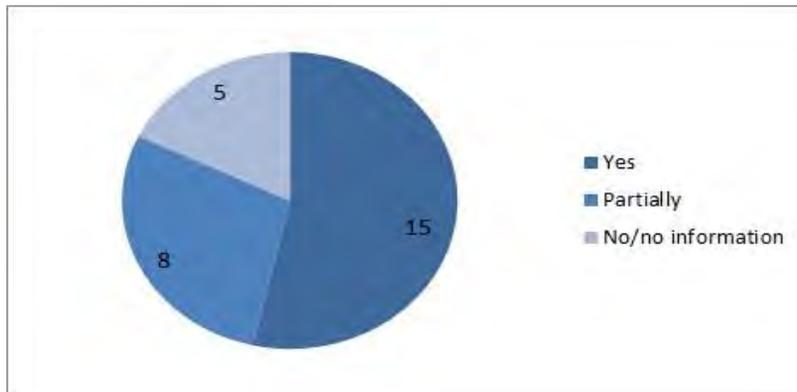
5. Education and training : promote inclusive education and lifelong learning for students and pupils with disabilities. Equal access to quality education and lifelong learning enable disabled people to participate fully in society and improve their quality of life. The European Commission has launched several educational initiatives for disabled people. These include the European Agency for Development in Special Needs Education as well as a specific study group on disability and lifelong learning.

6. Social protection : promote decent living conditions, combat poverty and social exclusion.

7. Health : promote equal access to health services and related facilities.

8. External action : promote the rights of people with disabilities in the EU enlargement and international development programmes.

Mandatory accessibility standards in EU Member States for national and local authority buildings



- Fifteen EU Member States have mandatory accessibility standards for the construction and alteration of national and local authority buildings.
- **Austria, Belgium, Czech Republic, Denmark, Finland, France, Hungary, Ireland, Italy, Lithuania, Luxembourg, Poland, Portugal, Spain, United Kingdom**

- **Cyprus, Germany, Greece and Sweden,** allow for exceptions or only requires the partial application of accessibility standards when altering existing buildings.

- **Slovenia, Bulgaria, Estonia, Croatia, Latvia Netherlands, Malta, Romania, Slovakia**
- No information was given in the report on accessibility standards in force for new and existing buildings

- Directive (EU) 2016/2102 on the accessibility of the websites and mobile applications of public sector bodies

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Disability and Non-Discrimination in the European Union

Trier, 7 May 2019

***Nataša Kokić, ENIL – European
Network on Independent Living***



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About ENIL

- Established in 1989;
- Brings together grassroots organisations run by disabled people, and individuals;
- Members in 47 countries across Europe;
- Advocates for control and choice for disabled people through personal assistance, peer support, barrier-free environment, housing options and technical aids;
- Our main activities: personal assistance, data collection, peer support training, promoting deinstitutionalisation, EU Funds advocacy, the right to independent living, disability hate crime, 5th May – European IL Day, Freedom Drive;
- ENIL Youth Network & ECCL;
- Campaign EU Funds For Our Rights - Supported by Open Society Foundations – Public Health Programme - The aim is to encourage the European Commission and the Member States to improve the monitoring and complaints system, in order to ensure that Structural Funds are used to support the rights of disabled people, rather than restrict them.

AVAILABILITY AND ACCESS TO EU FINANCIAL INSTRUMENTS IN LINE WITH THE UNCRPD



General comment No 5 on Article 19 CRPD

Introduction:

13. Equality and non-discrimination are fundamental principles of international human rights law and enshrined in all core human rights instruments. In its general comment No. 5 (1994) on persons with disabilities, the Committee on Economic, Social and Cultural Rights highlights that **“segregation and isolation achieved through the imposition of social barriers” count as discrimination**. It also stresses in relation to article 11 that the right to an adequate standard of living not only includes having equal access to adequate food, accessible housing and other basic material requirements, but also the availability of support services and assistive devices and technologies fully respecting the human rights of persons with disabilities.

33. Accessibility of community facilities, goods and services, as well as the exercise of the right to inclusive, accessible employment, education and health care are essential conditions for the inclusion and participation of persons with disabilities in the community.

Various deinstitutionalization programmes have shown that the closure of institutions, regardless of their size and the relocation of inhabitants in the community, in itself is not enough. Such reforms must be accompanied by comprehensive service and community development programmes, including awareness programmes. Structural reforms designed to improve overall accessibility within the community may reduce the demand for disability-specific services.

Core elements

38. h) To use any available funding, including regional funding and funding for development cooperation, **to develop inclusive and accessible independent living services.**

Obligation to protect:

51. States parties should ensure that **public or private funds are not spent on maintaining, renovating, establishing building or creating any form of institution or institutionalization.** Furthermore, States parties must ensure that private institutions are not established under the guise of “community living”.

General comment No 6 on Article 5 CRPD (equality and non-discrimination)

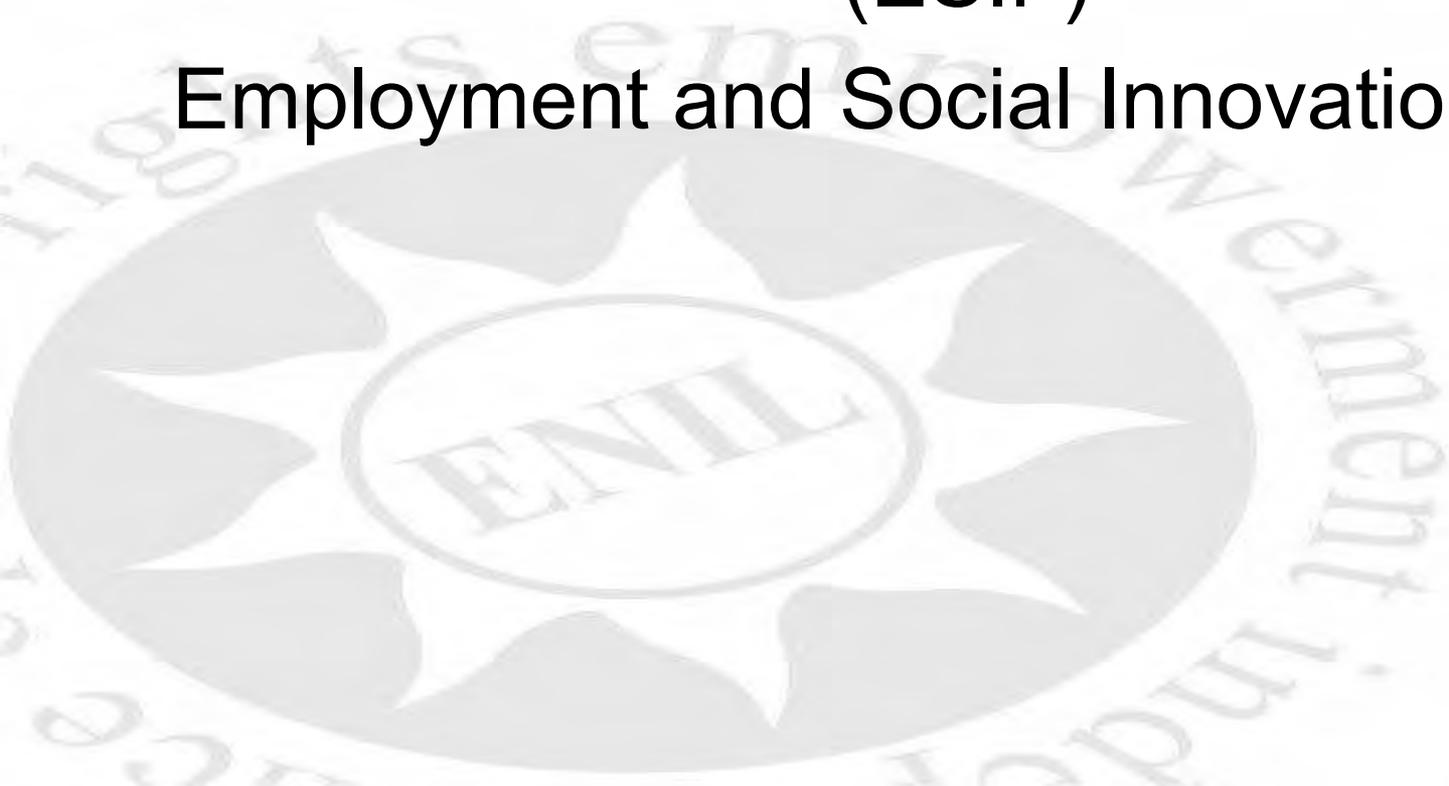
46. States parties are under an immediate obligation to eliminate discrimination against individuals or groups of persons with disabilities and to guarantee their equal right to living independently and participation in the community (...).

58. Institutionalization is discriminatory as it demonstrates a failure to create support and services in the community for persons with disabilities, who are forced to relinquish their participation in community life to receive treatment.

EU financial instruments

European Structural and Investment Funds
(ESIF)

Employment and Social Innovation (EaSI)



ESIF and Europe 2020

EUROPE 2020 GOALS	THEMATIC OBJECTIVES
Smart growth	<ol style="list-style-type: none"> 1. Strengthening research, technological development and innovation; 2. Enhancing access to, and use and quality of, ICT; 3. Enhancing the competitiveness of SMEs, of the agricultural sector (for the EAFRD) and of the fishery and aquaculture sector (for the EMFF)
Sustainable growth	<ol style="list-style-type: none"> 1. Supporting the shift towards a low-carbon economy in all sectors; 2. Promoting climate change adaptation, risk prevention and management; 3. Preserving and protecting the environment and promoting resource efficiency; 4. Promoting sustainable transport and removing bottlenecks in key network infrastructure
Inclusive growth	<ol style="list-style-type: none"> 1. Promoting sustainable and quality employment and supporting labour mobility; 2. Promoting social inclusion, combating poverty and any discrimination; 3. Investing in education, training and vocational training for skills and lifelong learning; 4. Enhancing institutional capacity of public authorities and stakeholders and efficient public administration.

European Code of Conduct on Partnership

- A framework for involving partners in the programming, implementation and monitoring and evaluation of ESIF in 2014 – 2020
 - “... implies close cooperation between public authorities, economic and social partners and bodies representing civil society at national, regional and local levels throughout the whole programme cycle consisting of preparation, implementation, monitoring and evaluation.” (Recital 2)
 - See Thematic Network on Partnership study on the quality of partnership

Structural Funds Regulations

- **Common Provisions Regulation**

- Objective 9: Promoting social inclusion, combating poverty and any discrimination;
- Ex ante conditionalities – a thematic conditionality (strategy for poverty reduction that includes measures for the transition from institutional to community-based care) and general conditionalities (non-discrimination and UN CRPD);

European Social Fund

ESF is Europe's main tool for promoting employment and social inclusion

Main priorities:

- To improve employment opportunities
- To promote education and life-long learning
- To enhance social inclusion and contribute to combating poverty
- To improve public services

ESF Regulation:

- [Regulation \(EU\) No 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation \(EC\) No 1081/2006](#)

Preamble:

(19) In accordance with Article 10 TFEU, the implementation of the priorities financed by the ESF should contribute to combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation by paying particular attention to those facing multiple discrimination. Discrimination on the ground of sex should be interpreted in a broad sense so as to cover other gender-related aspects in line with the case law of the Court of Justice of the European Union. The implementation of the priorities financed by the ESF should also contribute to promoting equal opportunities. The ESF should support the fulfilment of the Union's obligation under the UN Convention on the Rights of Persons with Disabilities with regard inter alia to education, work, employment and accessibility. **The ESF should also promote the transition from institutional to community-based care. The ESF should not support any action that contributes to segregation or to social exclusion.**

Article 2 – Missions

3. The ESF shall benefit people, including disadvantaged people such as the long-term unemployed, **people with disabilities**, migrants, ethnic minorities, marginalised communities and people of all ages facing poverty and social exclusion. The ESF shall also provide support to workers, enterprises, including actors in the social economy, and entrepreneurs, as well as to systems and structures with a view to facilitating their adaptation to new challenges including reducing skill mismatches and promoting good governance, social progress, and the implementation of reforms, in particular in the fields of employment, education, training and social policies.

Article 8 - Promotion of equal opportunities and non-discrimination

The Member States and the Commission shall promote equal opportunities for all, without discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation through mainstreaming the principle of non-discrimination, as referred to in Article 7 of Regulation (EU) No 1303/2013. Through the ESF, the Member States and the Commission shall also support specific actions within any of the investment priorities referred to in Article 3, and in particular Article 3(1)(b)(iii) of this Regulation. Such actions shall aim to combat all forms of discrimination as well as to improve accessibility for persons with disabilities, with a view to improving integration into employment, education and training, thereby enhancing social inclusion, reducing inequalities in terms of educational attainment and health status, **and facilitating the transition from institutional to community-based care, in particular for those who face multiple discrimination.**

European Regional Development Fund

ERDF aims to strengthen economic and social cohesion in the European Union by correcting imbalances between its regions.

The ERDF focuses its investments on several key priority areas. This is known as 'thematic concentration':

- Innovation and research;
- The digital agenda;
- Support for small and medium-sized enterprises (SMEs);
- The low-carbon economy.

ERDF Regulation:

Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006

Preamble:

- (15) In order to promote social inclusion and combat poverty, particularly among marginalised communities, it is necessary to improve access to social, cultural and recreational services, through the provision of small-scale infrastructure, **taking account of the specific needs of persons with disabilities and the elderly.**
- (16) Community-based services should cover all forms of in-home, family-based, residential and other community services which support the right of all persons to live in the community, with an equality of choices, and which **seek to prevent isolation or segregation from the community.**

Article 5 – Investment priorities:

- **Promoting social inclusion, combating poverty and any discrimination, by:**
- (a) investing in health and social infrastructure which contributes to national, regional and local development, **reducing inequalities** in terms of health status, promoting social inclusion through improved access to social, cultural and recreational services and **the transition from institutional to community-based services**;
- (b) providing support for physical, economic and social regeneration of deprived communities in urban and rural areas;
- (c) providing support for social enterprises;
- (d) undertaking investment in the context of community-led local development strategies.

European Agricultural Fund for Rural Development (EAFRD)

- Fostering the competitiveness of agriculture
- Ensuring the sustainable management of natural resources, and climate action
- Achieving a balanced territorial development of rural economies and communities including the creation and maintenance of employment.

EAFRD Regulation:

[Regulation \(EU\) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development \(EAFRD\) and repealing Council Regulation \(EC\) No 1698/2005](#)

Article 5 - Union priorities for rural development:

“(6) Promoting **social inclusion**, poverty reduction and economic development in rural areas, with a focus on the following areas:

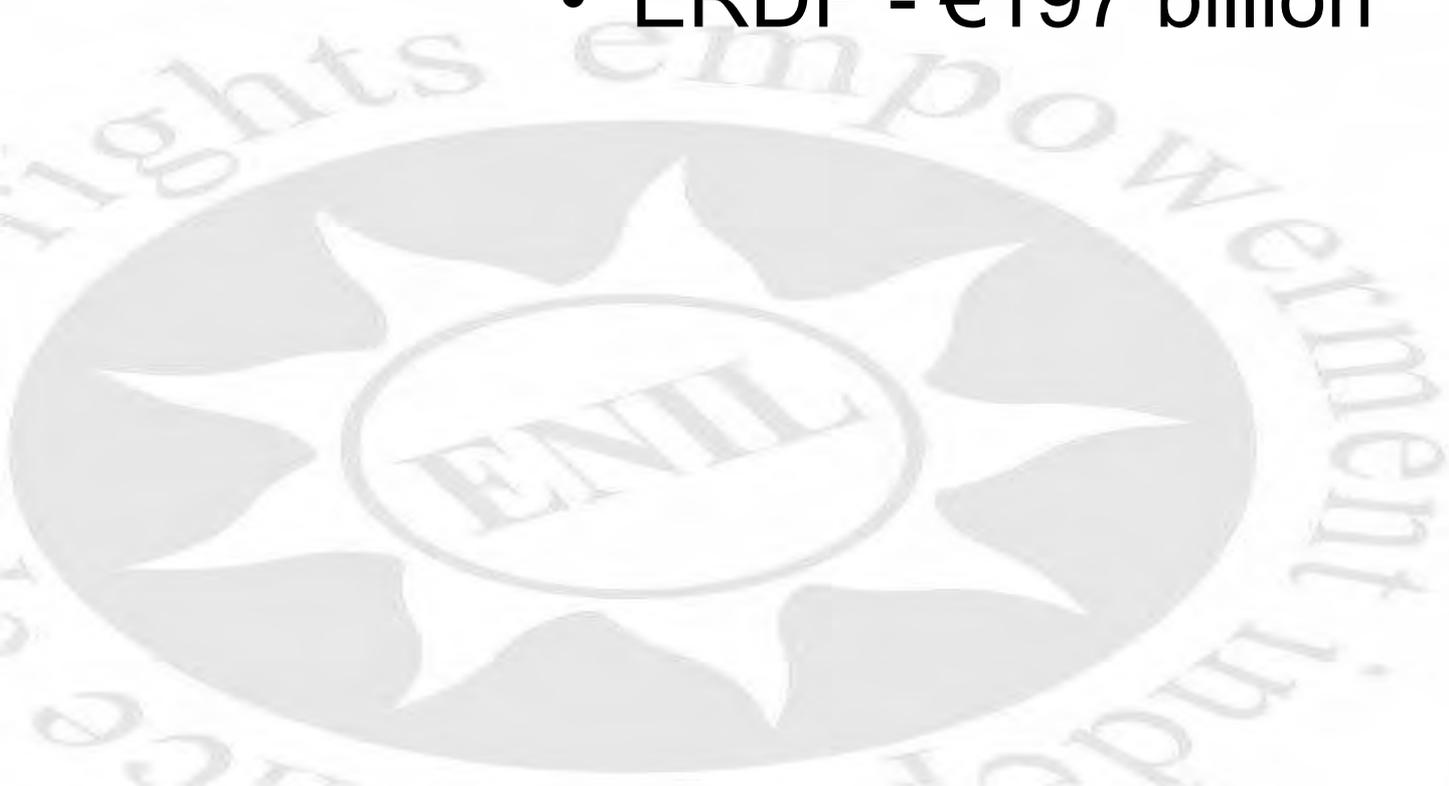
- (a) facilitating diversification, creation and development of small enterprises, as well as job creation;
- (b) fostering local development in rural areas;
- (c) enhancing the accessibility, use and quality of information and communication technologies (ICT) in rural areas.

EU funds and energy efficiency

- The source of funding for institutions requires investigation - in some cases Structural Funds have been invested through Operational Programmes unrelated to reform in health and social care infrastructure, to meet other targets such as improving accessibility or **energy efficiency**.
- **Important to closely monitor energy efficiency projects** as some countries use EU funds to renovate institutions with the justification that “public sector buildings” need renovations to reduce their energy consumption.
- As in the case of energy efficiency enhancements, investments that increase accessibility in large institutions make it much more challenging to close them in the short to medium term.

Figures for 2014-2020

- Total ESIF €454 billion
 - ESF - €87 billion
 - ERDF - €197 billion



EaSI - Programme for Employment and Social Innovation

- The Employment and Social Innovation (EaSI) programme is a financing instrument at EU level to promote a high level of quality and sustainable employment, guaranteeing adequate and decent social protection, combating social exclusion and poverty and improving working conditions.

- Managed directly by the European Commission;
- It brings together three EU programmes managed separately between 2007 and 2013: PROGRESS, EURES and Progress Microfinance;
- Three axes of EaSI support:
 - the modernisation of employment and social policies with the PROGRESS axis (61% of the total budget);
 - job mobility with the EURES axis (18% of the total budget);
 - access to micro-finance and social entrepreneurship with the Microfinance and Social Entrepreneurship axis (21% of the total budget).
- *The total budget for 2014-2020 is EUR 919,469,000 in 2013 prices.*

EaSI Regulation

[Regulation \(EU No 1296/2013 of the European Parliament and of the Council of 11 December 2013 on a European Union Programme for Employment and Social Innovation \(“EaSI”\) and amending Decision No 283/2010/EU establishing a European Progress Microfinance Facility for employment and social inclusion](#)

Article 4 - General objectives of the Programme

1. The Programme shall seek to achieve the following general objectives:

(...)

c) combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation;

Article 14 – Thematic sections and financing

The Progress axis shall support actions in one or more of the thematic sections listed in points (a), (b) and (c). Over the entire period of the Programme, the indicative breakdown of the allocation set out in point (a) of Article 5(2) between the different sections shall respect the following minimum percentages: (...)

b) social protection, social inclusion and the reduction and prevention of poverty: 50 %;

European Ombudsman initiative

- As part of her own initiative into the use of Structural Funds, the European Ombudsman issued guidelines to the European Commission on how to ensure investments are in line with the EU Charter on Fundamental Rights;
- One of the guidelines focuses on the monitoring and complaints system, and has asked the European Commission to ensure these are 'adequate and efficient'.

European Commission's measures

Guidance on ensuring the respect of the Charter of Fundamental Rights of the European Union in the implementation of ESI Funds

Relevance of the Charter for ESIF

- The Charter is addressed to Member States (Article 51(1)) only when they are implementing EU law
- All the Member States' actions undertaken for the implementation of the applicable regulations fall within the scope of EU law

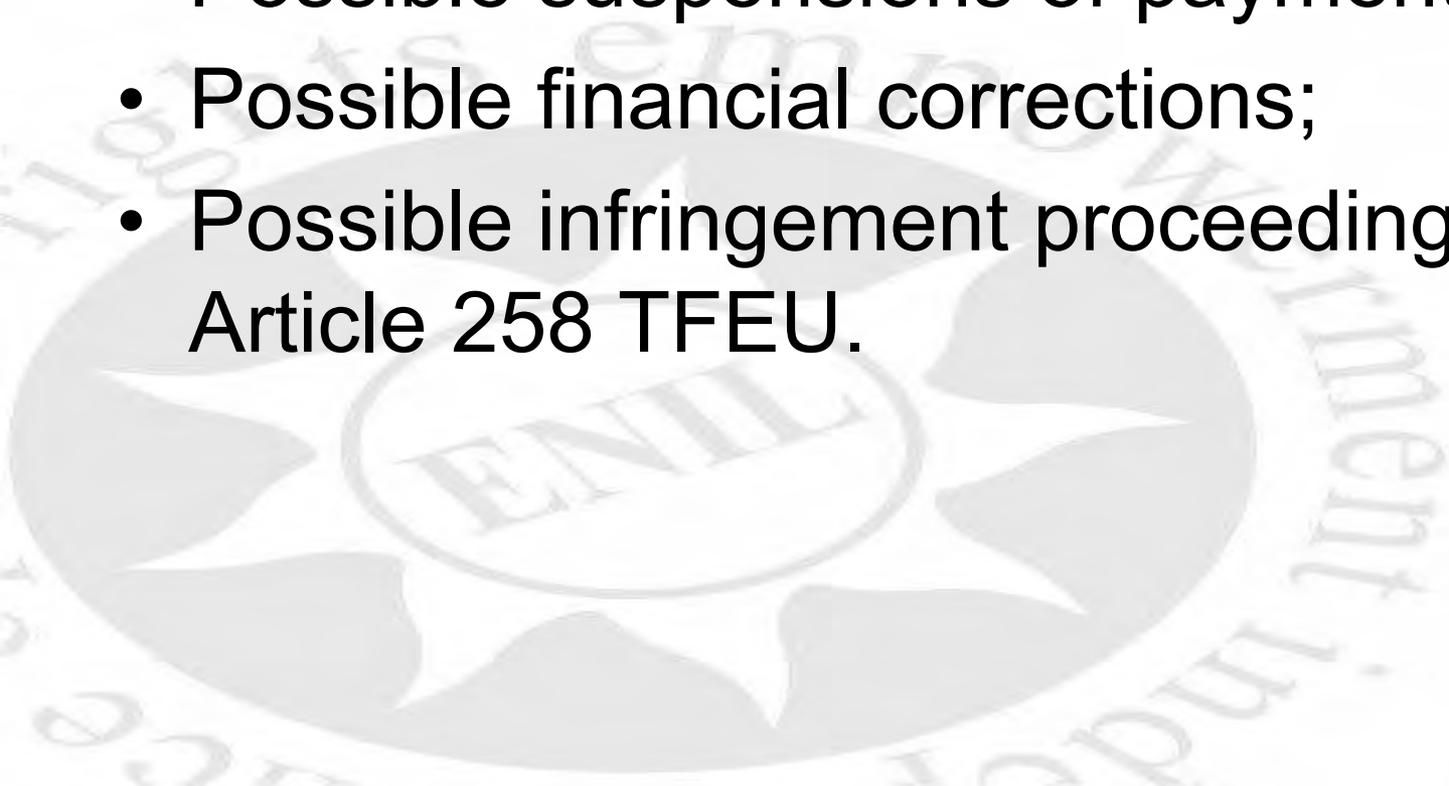
Charter applies to:

- central authorities
- regional and local authorities
- other public authorities

In the context of the ESIF: it might apply to ESIF beneficiaries, whatever their legal form is.

Consequences of non-respect of the Charter by Member States

- Possible interruptions of payment deadlines;
- Possible suspensions of payments;
- Possible financial corrections;
- Possible infringement proceedings under Article 258 TFEU.



Commission proposals for 2021 - 2027

- Common Provisions Regulation
- ESF+
- European Regional Development Fund



Conditionalities

Ex-ante conditionalities

Art 19 CPR 2014-2020

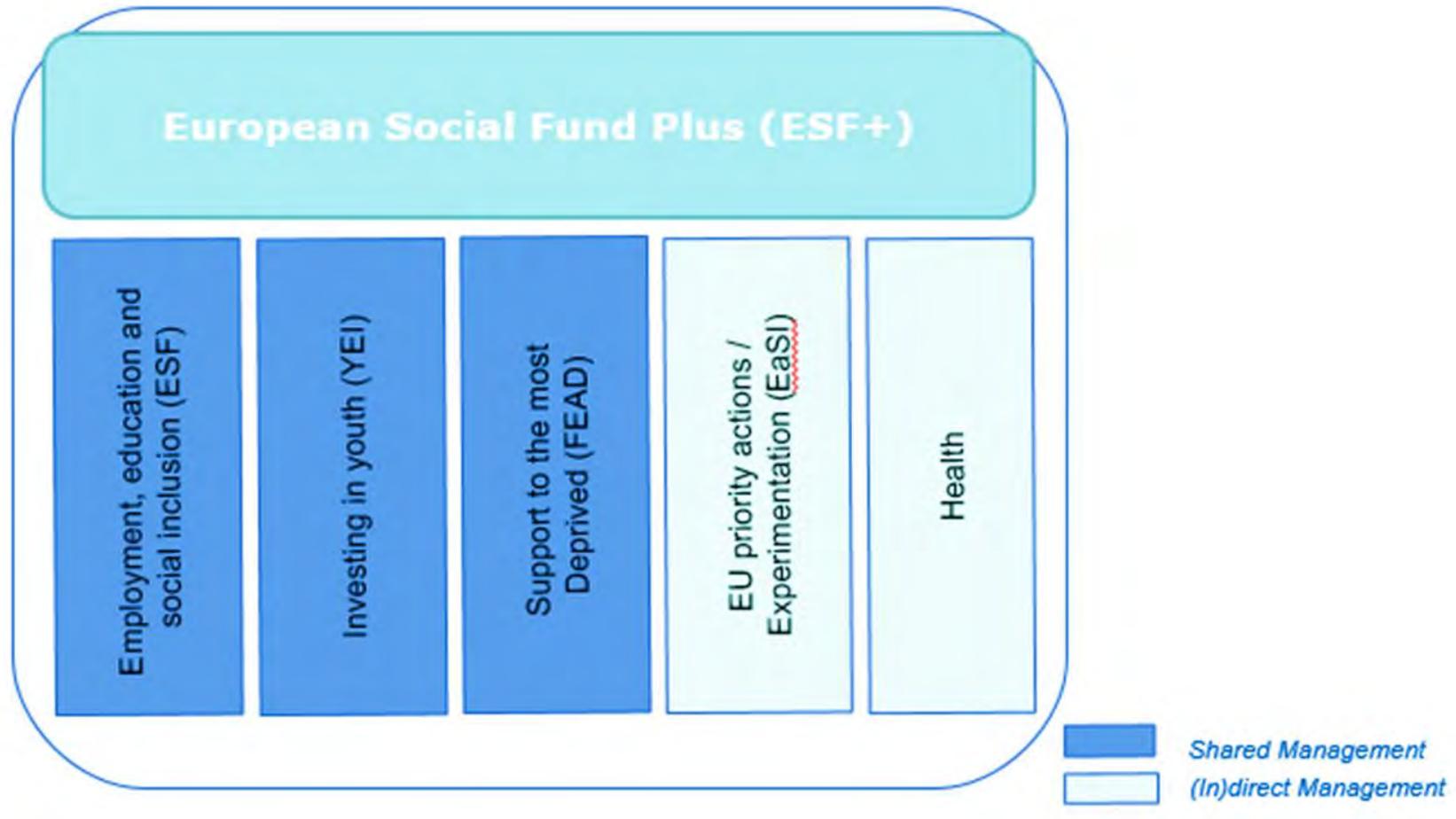
- Administrative capacity for the implementation and application of EU antidiscrimination law and policy in the field of ESI Funds
- Administrative capacity for the implementation and application of of the UNCRPD in the ESI Funds
- Measures to promote the shift from institutional to community-based care within the anti-poverty Strategy

Enabling conditions

Art 11 CPR 2021-2027

- Effective application and implementation of the EU charter of Fundamental Rights
- Implementation and application of the UNCRPD
- Strategic policy frameworks for social inclusion and poverty reduction & for health, including measures to promote community-based services.

The ESF+: 5 funds coming together



Fundamental rights

ESF +:

- The ESF+ Regulation ensures the respect of fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. Member States must apply this Regulation in a manner consistent with these rights and principles.

ERDF:

Preamble

- (5) Horizontal principles as set out in Article 3 of the Treaty on European Union ('TEU') and in Article 10 of the TFEU, including principles of subsidiarity and proportionality as set out in Article 5 of the TEU, should be respected in the implementation of the ERDF and the Cohesion Fund, taking into account the **Charter of Fundamental Rights of the European Union**.

CPR:

- By introducing an enabling condition to ensure the respect of the Charter of Fundamental Rights of the EU, this Regulation will have a positive impact on the respect and protection of all fundamental rights in the managements of all seven funds. Respect for the rule of law is covered in a self-standing regulation based on Article 322 TFEU.

Institutionalisation vs. IL

How SF are commonly used	How SF should be used
Renovating/modernising institutions	Developing alternatives in the community that facilitate IL (infrastructure and support, such as personal assistance)
Building new institutions	Developing alternatives in the community that facilitate IL (infrastructure and support, such as personal assistance)
Building group homes or living centres	Increasing the social housing stock, purchasing regular apartments and houses in the community, making apartments and houses in the community accessible
Funding special/parallel services (day centres, sheltered employment, special schools)	Making mainstream services accessible and available to disabled people (employment, education, childcare, health, transport etc.)

CASE STUDY



Discussion and conclusions



Bulgaria

- Call for Proposals BG16RFOP001-5.002 (“Support for deinstitutionalisation of services for adults and people with disabilities”), co-financed by ERDF, through the OP “Regions in Growth”;
- The funding, which amounts to nearly 18 million Euros, will be used for the building, renovation, furnishing and equipment of 6 day-care centres and 68 care homes for older people and people with disabilities, including people with mental health problems, intellectual disabilities and people with dementia;
- The funds will go to 29 municipalities, with each set to build up to 9 new facilities. In one such municipality, Dryanovo, a large institution for 100 women with disabilities will be replaced with 7 new care homes, all of which will be located within this small town of less than 8,000 inhabitants.

- **ENIL, the Centre for Independent Living Sofia and the Validity Foundation** are calling on the Bulgarian Government to immediately suspend a programme which will ESI Funds into the building of a large number of residential care facilities for people with disabilities and older people;
- The three NGOs are asking the Ministry to immediately suspend the call, on the basis that the approved projects contravene Bulgaria's obligations under binding European and international human rights standards;
- For more details: <https://enil.eu/news/bulgaria-must-suspend-the-construction-of-68-institutions-for-the-disabled/>

Concerns

- To date, there is slow progress in some MS in establishing strategies that reflect a clear commitment to attaining the goal of independent living;
- ESI Funds continue to support projects that exclude disabled people from community life, rather than promote their social inclusion;
- The existing monitoring systems – in the MS and at EU level - are not robust enough to prevent the use of ESI Funds for projects that perpetuate the social exclusion and segregation of disabled people;
- Disabled people and their organisations are still largely excluded from the process of ESI Funds planning, implementation, monitoring and evaluation. There is little evidence of the use of ESI Funds to facilitate access to the right to IL;
- MS continue placing disabled people into institutional care, by building new state-funded residential care facilities.

Recommendations

- 1. Provide training on the General Comment on Article 19**
 - Should target all DGs;
 - To be developed and delivered by organisations promoting IL and those with lived experience;
- 2. Ensure compliance with the CRPD:**
 - Develop guidance based on the General Comment on Article 19
- 3. Review ex ante conditionalities for EU Funding post 2020:**
 - Require comprehensive strategies;
 - Develop means of evaluating the strategies.

4. Take action to prevent the inappropriate use of ESI Funds:

- EC should investigate cases of potential 'misuse' of ESI Funds and intervene in all cases when projects or plans fail to comply with Article 19 CRPD;
- Make clear to MS that ESI Funds must not be used for projects that exclude disabled people from society;
- Work with organisations promoting IL.

5. Improve the monitoring mechanisms for ESI Funds:

- Put in place a system to improve how ESI Funds investments are monitored;
- Enable access to relevant information;
- Increase the capacity of CSOs to take part in different stages of ESI Funds use.

6. Involve disabled people in the evaluation of the support they receive:

- Process for evaluating projects intended to promote IL must take into account experiences of those who 'benefit' from ESI Funding.

7. Enhance the implementation of the partnership principle:

- EC to improve monitoring of CSO engagement at the national level;
- Consider how to involve the most marginalised groups of disabled people;
- Encourage MS to publicise information about projects funded.

8. Encourage more Member States to use ESI Funds for deinstitutionalisation:

- All MS that have not yet closed their long-stay residential institutions for disabled people should have DI as one of their investment priorities post 2020.

Estonia (2007-2013)



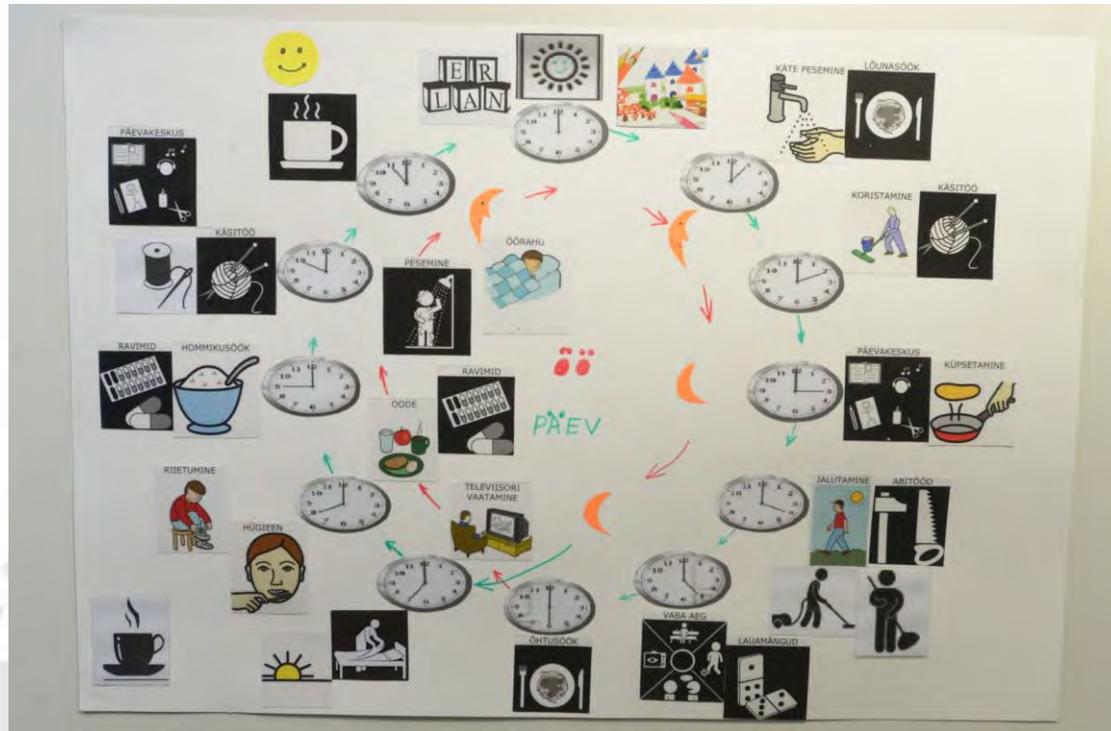
Sinimäe village (*Sinimäe alevik*)



Sinimäe village (*Sinimäe alevik*)







10 persons per service unit and 6 service units = 60 persons total

Daily plan for the customers living in the house, which sets out the time for meals, daily routines (showering, cleaning, dressing etc), work and free time activities (day center, exercising, handicraft etc).

Home rules (extracts)

“I follow the daily plan of the home/---/ During the night I stay in the Home”.

“I know that in the territory of the home it is prohibited to consume alcohol/---/”

“If agreed with the occupational therapist, I can use my own things in my own room: television, radio and other technical equipment as well as furniture.”

“If agreed with the occupational therapist, I have an opportunity to use the Home’s telephone 10 minutes per week.”

“I am aware, that the Home can end the contract with me before it has expired, if I break the rules more than once.”

Portugal (2014-2020)

The screenshot shows the website of the Azores Government (Governo dos Açores). The header includes the logo and name of the government, along with navigation tabs for 'PRINCIPAL', 'PRESIDENTE', 'GOVERNO REGIONAL', 'ESPAÇO CIDADÃO', 'ESPAÇO EMPRESAS', and 'SOBRE OS AÇORES'. Below the header, there is a breadcrumb trail indicating the current page is 'Secretaria Regional da Solidariedade Social' > 'Direção Regional da Solidariedade Social'. The main content area displays the project title 'ACORES-09-4842-FEDER-000010 - Construção do Lar Residencial dos Valados'. Below the title, it states 'Cofinanciado por:' followed by logos for 'AÇORES 2020 PROGRAMA OPERACIONAL FEDER FSE', 'GOVERNO DOS AÇORES', 'PORTUGAL 2020', and 'UNIÃO EUROPEIA Fundo Europeu de Desenvolvimento Regional'. The project details listed are: 'Objetivo Principal: Melhorar o Acesso aos Serviços Sociais', 'Entidade Beneficiária: SRSS - Direção Regional da Solidariedade Social', 'Custo Total Elegível: 913.279,58€', and 'Apoio Financeiro da União Europeia: 776.287,65€'.

1 - Azores Government (http://www.azores.gov.pt/Portal/pt/entidades/srss-drss/textoImagem/ACORES-09-4842-FEDER-000010-_Construcao_do_Lar_Residencial_dos_Valados.htm)

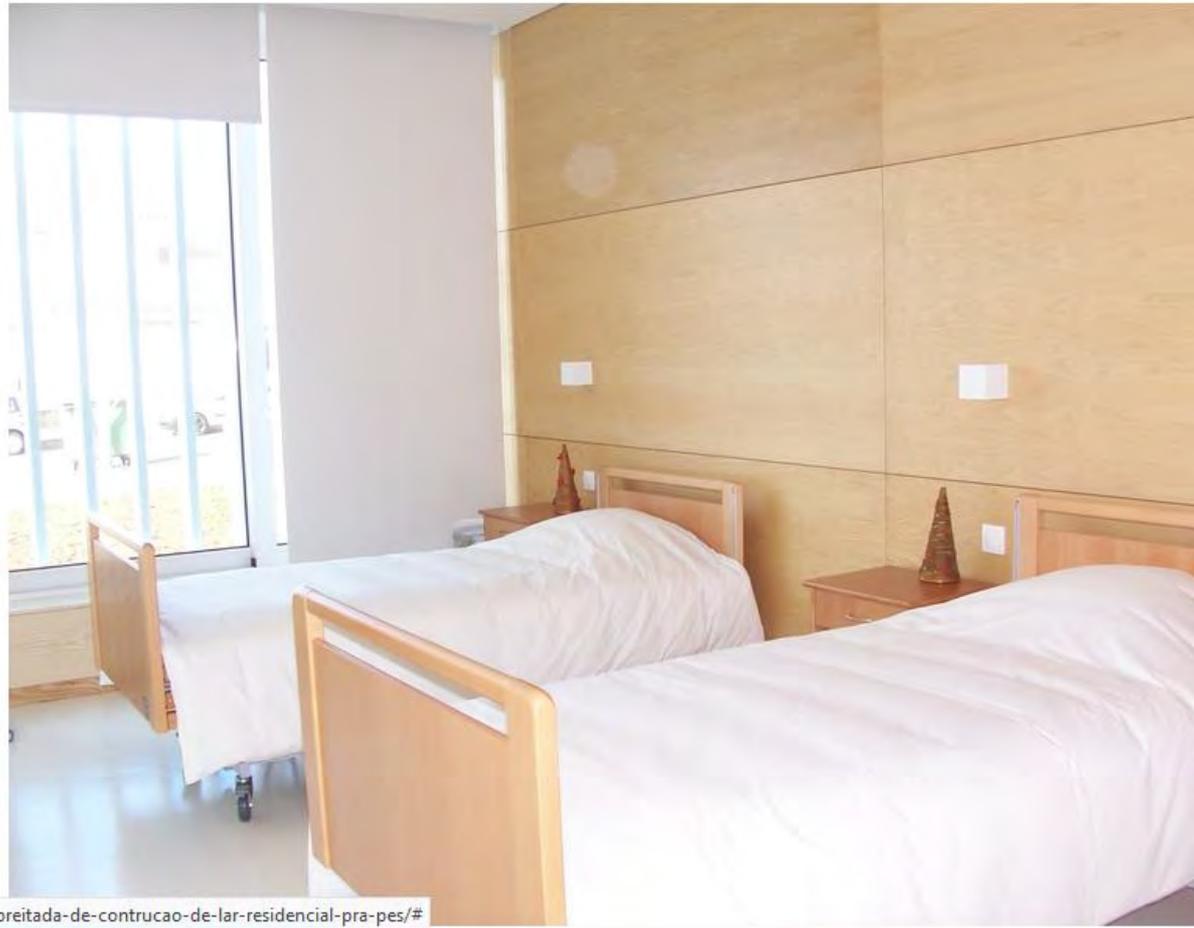




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breitada-de-contrucao-de-lar-residencial-pra-pes/#

Hungary (2014-2020)

- Call for Proposals on Human Resources Development Operational Programme 2.2.2 – 17. Conversion of institutional supply to community-based services – replacing institutional places (EFOP-2.2.2.-17) – projects which affect 2,500 people with disabilities and are valued at nearly 24 billion HUF (76 million EUR), and will result in further segregation of people with disabilities in hundreds of new mini-institutions.
- ENIL, the Validity Foundation, and the Hungarian Civil Liberties Union ask the government to suspend the projects currently under implementation and thoroughly redesign the process: Press release: <http://enil.eu/news/hungarian-government-must-suspend-redesign-deinstitutionalisation-projects-affecting-2500-people-disabilities/>

• Problems detected:

- Many of the group homes which will be built, will be located away from cities in sparsely inhabited rural settlements, thus further ostracising people with disabilities. Many of the settlements chosen lack public services, have aging communities and declining populations.
- Some group homes will be built on flood plains; on inaccessible, industrial zones; swampy-reedy areas or near a sewage disposal plant.
- In many cases, group homes will be built within the grounds of current large institutions or in the immediate proximity of them. Residents of the newly built homes will be transported by minibuses to so-called Service Centres which will, in many cases, be established in the area of the former large institutions or in some cases inside of them. People will still eat and be cared for as previously, in an institutional setting.
- The new residential homes will function as mini-institutions, denying people their independence: they won't be able to decide where and with whom they live, choose their careers, or make choices about their daily routine.

Useful resources

- ENIL – Briefing on the use of EU Funds for Independent Living: http://enil.eu/wp-content/uploads/2018/04/EU-Funds-Briefing_web0903.pdf
- ENIL Briefing - Towards a more effective monitoring and complaints system: http://enil.eu/wp-content/uploads/2017/07/OurRightsCampaign-Briefing_FINAL.pdf
- ENIL Report Working Together to Close the Gap: <http://www.enil.eu/wp-content/uploads/2016/06/Working-Together-to-Close-the-Gap-web.pdf>
- ENIL Briefing on Structural Funds Investments for People with Disabilities: Achieving the Transition from Institutional care to Community Living: <http://community-living.info/wp-content/uploads/2014/02/Structural-Fund-Briefing-final-WEB.pdf>
- ENIL Myth Buster on Independent Living: <http://www.enil.eu/wp-content/uploads/2014/12/Myths-Buster-final-spread-A3-WEB.pdf>
- General Comment on Article 19: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/5&Lang=en

- Common provisions regulation (CPR): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R1303>
- ERDF Regulation: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1301>
- ESF Regulation: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32013R1304>
- Open Data Portal – DG Regio: <https://cohesiondata.ec.europa.eu/>
- Guidance on ensuring the respect for the Charter of Fundamental Rights of the European Union when implementing the European Structural and Investment Funds: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2016.269.01.0001.01.ENG&toc=OJ:C:2016:269:TOC
- Commission delegated Regulation (EU) of 7.1.2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.074.01.0001.01.ENG
- ESF in your country: <http://ec.europa.eu/esf/main.jsp?catId=45&langId=en>
- ERDF: http://ec.europa.eu/regional_policy/en/atlas/managing-authorities/
- ESIF guidance: http://ec.europa.eu/regional_policy/en/information/legislation/guidance/
- Partnership Agreements: https://ec.europa.eu/info/publications/partnership-agreements-european-structural-and-investment-funds_en

Thank you for your attention!

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Trier, 7 May 2019

Case study

Availability and access to EU financial instruments in line with the UNCRPD

Description of Situation

Government of a country A prepared an Operational Programme within one of the EU funds which includes a number of measures to support the inclusion of people with disabilities. Some of the operations will specifically facilitate deinstitutionalisation process and access to independent living of people with disabilities.

The funding under one specific call will be used for building, renovation, furnishing and equipment of 4 day-care centres and 60 care homes for people with disabilities.

Roles and tasks

We'll divide the group into 3 small groups:

1. EU level NGO
2. European Commission
3. Government

Each group should reflect on following questions:

1. What questions come to your mind in relation to this call? What would you want to know about it?
2. What legal standards are relevant to evaluate if the rights of people with disabilities will be respected through this operation?
3. What would you like to learn more about the call and would you maybe complain? Whom would you consult?

