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**HUMAN RIGHTS EDUCATION IN THE CONTEXT  
OF THE EUROPEAN POLICY AGAINST DISCRIMINATION  
BASED ON DISABILITY: THE MAIN CHALLENGES FACED  
BY THE DISABLED POPULATION IN THE AREA OF FREEDOM  
AND SECURITY**

**Introduction**

Since WW II, the existence of human rights issue has been recognized in international law, and to varying degrees, in most domestic legal systems. Putting aside the question of how effectively these laws are enforced, the very fact of their enactment has changed the political and social landscape of the world. Most of these national and international instruments make ringing declaration along the lines that “human rights shall not be denied on the basis of...”, followed by a specific enumerated list that typically includes the grounds of race, ethnicity, national origin, and gender. The world’s largest minority<sup>1</sup> was not initially admitted into this ‘human rights club’. Disabled people have traditionally been marginalised in social development discussions. The diminished opportunities and isolation of people with disabilities was seen as an inevitable consequence of their individual conditions and an issue for charity, not a matter of human rights being denied. Until relatively recently, dis-

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<sup>1</sup> It is estimated that over 650 million people, 10 percent of the world’s population have disability. 80 percent live in developing countries. Also in Europe the problem of discrimination against disabled persons is not the problem of a small minority. According to the latest figures 80 million persons with disabilities live in Europe.

ability has never been specifically included as a prohibited ground for the denial of human rights. Discrimination on the basis of disability today affects a large portion of the world's population. It is one of the main problems persons with, or associated with disabilities face. It manifests itself in different forms and can have disastrous effects on their lives and, by extension, on the rest of society.

Discrimination against persons with disabilities has a long history and takes various forms. They range from invidious discrimination, such as the denial of educational opportunities, to more "subtle" forms of discrimination such as segregation and isolation achieved through the imposition of physical and social barriers. Through neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with persons without disabilities. The effects of disability – based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services.

Traditionally, disabled people's issues have been marginalised and categorised as "special" or "different", and the concept of "integration" has been based on changing the individual to conform to society, rather than promoting social change that liberates, empowers and incorporates the experiences of disabled people. Although the focus has been put specifically on economic, social and cultural rights, the same is true for civil and political rights. For example, in many countries, some persons with disabilities are still denied the right to vote as well as legal capacity to marry or enter into contracts to buy or sell property.

Persons with disabilities remain amongst the most marginalized in every society. While the international human rights framework has changed lives everywhere, persons with disabilities have not received the same benefits. Regardless of a country's human rights or economic situation, they are generally the last in line to have their human rights respected. Being denied the opportunities that would enable them to be self-sufficient, most persons with disabilities resort to the kindness or charity of others. Like individuals of various ethnic, religious, gender and national origins, individuals with physical or mental limitations historically have faced discrimination in the forms of exclusion, from mainstream society. Persons with disability encounter segregation, unequal or inferior services, benefits or activities, and screening criteria that do not correlate with actual ability.

People with disabilities have the same rights as all other people. However, for a number of reasons they often face social, legal, and practical barriers in claiming their human rights on equal basis with others. These reasons stem from misperceptions and negative attitude toward disability. People with disabilities are routinely denied the basic rights: receiving education, moving around freely, living independently in the community, getting jobs, even when well qualified, accessing information, obtaining proper health care, exercising political rights, such as voting, making their own decisions.

Myths and misconceptions about disability are often triggered by fear, lack of understanding and/or prejudice. Common myths and stereotypes that emerge repeatedly require constant education in order to overcome them and overcome discrimination based on those prejudice. The type of discrimination encountered by disabled people is not just a question of individual prejudice. It is institutionalised in the very fabric of our society. Institutional discrimination is a complex form of discrimination which operates throughout society and is supported by history and culture. Historically, persons with disabilities have been viewed with a variety of emotions including suspicion, ridicule and pity. Until fairly recently they have been excluded almost completely from all aspects of community life. Our culture is full of discriminative language and imagery which keeps the traditional fears and prejudices which surround impairment alive. The only way to eliminate institutional discrimination is with anti-discrimination legislation and human rights education. People often label individuals with disability according to their condition or limitation. Human rights educational programs must be constructed around concept that disability does not dominate a person's life. Each individual finds their way of adopting. People with disabilities may require help on occasion; however, disability does not mean dependency. It is always a good strategy not to assume a person with disability needs assistance. The community requires constant education in order to overcome negative stereotypes based on misconceptions.

### **Growing awareness of disability as a human rights issue**

Recognition that people with disabilities should be treated as equal members of society is a relatively recent development.<sup>2</sup> International human rights law has been slow to recognise that disability is a human rights issue. Neither of the 1966 International Covenants, on civil and political rights and on economic, social and cultural rights contains any specific provision regarding the rights of disabled people, or explicit recognition of disability as a ground for protection against discrimination. However, both Covenants, in their discrimination articles, include in their lists of grounds the phrase "or other status", which clearly extends to discrimination in respect of disability. Furthermore, in its General Comment on disability published in 1994, the Committee on Economic, Social and Cultural Rights<sup>3</sup> has stated that

<sup>2</sup> In the USA the American with Disabilities Act (ADA) of 1990 became international standard for protecting disability rights.

<sup>3</sup> Treaty monitoring body – a committee of experts mandated to oversee and monitor the implementation of a human rights convention. Typically, a convention will indicate how large the committee will be, the criteria for selection of members, when and where the committee will meet, and what the committee is authorised to do in monitoring implementation. Many committees receive reports from governments describing what the country has done to implement its obligations under a convention. The committee will usually have an opportunity to ask questions of the States Party about the report, and then provide feedback in response to the report. Committees may also be mandated to issue general comments giving their authoritative interpretation of the convention.

“since the Covenant’s provisions apply fully to all members of society, persons with disabilities are clearly entitled to the full range of rights recognised in the Covenant”.

The rights of people with disability were first identified as priority in the 1970s with the UN Declaration on the Rights of Mentally Retarded Persons in 1971. In 1975, the United Nations General Assembly adopted the Declaration on the Rights of Disabled People – a document, however, with much less force than a convention. This asserts that disabled people have the same civil and political rights as other human beings. The year 1981 was designated as the International Year of Disabled Persons, and 1983–1994 was designated as the Disability Decade. In 1984, the Human Rights Commission adopted a resolution that recommended that a Special Rapporteur be appointed to study the connection between serious violations of human rights and disability.<sup>4</sup> In 1993, the UN Standard Rules on Equalization of Opportunities for Persons with Disabilities were adopted by the UN General Assembly.<sup>5</sup> They have the status of a declaration rather than a legally binding document, but as the resolution was adopted by consensus, without a vote, it is possible to argue that they are politically and morally binding on governments. They comprise 22 rules in total: four relating to preconditions for equal participation, eight relating to target areas for equalisation of opportunities and ten relating to implementation measures. The UN Standard Rules are guidelines designed to enhance the rights of people with disabilities. A series of resolutions were adopted by the then Human Rights Commission stating that “any violation of the fundamental principle of equality or any discrimination or other negative differential treatment of persons with disabilities inconsistent with the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities is an infringement of the human rights of persons with disabilities”.

In sum, then, by the end of the 20<sup>th</sup> century, significant progress was made. Disability gradually became visible in the international human rights arena – due in large part to the effective and persistent lobbying undertaken by disabled people’s organisations. However, there was still insufficient protection within the interna-

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Some committees can receive complaints from individuals and/or groups concerned that a State Party is violating its obligations under the convention.

<sup>4</sup> Leandro Despouy was appointed as Special Rapporteur in August 1984 and his report, *Human rights and disabled persons*, was published in 1993 (available at: <http://www.un.org/esa/socdev/enable/dispaperdes0.htm>, accessed 20.06.2016). Among his recommendations were proposals that national legislation should be adapted to international norms and guidelines, and that an international ombudsman should be appointed or that the UN Economic and Social Council (ECOSOC) should be given a special mandate to protect people with disabilities against violations of human rights. He also stressed that people with disabilities were at a disadvantage compared with other marginalised groups in that they did not have the protection of a single body of binding norms.

<sup>5</sup> The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the United Nations General Assembly, Forty-eighth Session, Resolution 48/96, Annex, 20 December 1993, available at: <http://www.un.org/esa/socdev/enable/dissre00.htm> (Accessed 20.06.2016).

tional human rights framework to address the problem, and the violation of rights of people with disabilities continued. Efforts to bring issues of discrimination based on disability on global scale have continued and culmination of all these was the UN Convention on the Rights of people with Disabilities.

### **UN Convention on the Rights of People with Disabilities**

Persons with disabilities were historically viewed as “objects” of welfare or medical treatment rather than “holders” of rights. As an individual deficit, the status of “being disabled” has been viewed as the natural cause for some people being unable to attend a regular school, get a job or participate in social life. When disability is perceived in this way, society’s responses are restricted to only one of two paths: individuals can be “fixed” through medicine or rehabilitation (medical approach); or they can be cared for, through charity or welfare programmes (charity approach). According to this old model, the lives of persons with disabilities are handed over to professionals who control such fundamental decisions as where they will go to school, what support they will receive and where they will live.

During the two first decades of the 21<sup>st</sup> century, there has been an important change in the way disability is understood. The focus is no longer on what is wrong with the person. Instead, disability is recognized as the consequence of the interaction of the individual with an environment that does not accommodate that individual’s differences and limits or impedes the individual’s participation in society. From this perspective, the social, legal, economic, political and environmental conditions that act as barriers to the full exercise of rights by persons with disabilities need to be identified and overcome. For example, their marginalization and their exclusion from education are not the result of their inability to learn but of insufficient teacher training or inaccessible classrooms; their exclusion from the labour market might be due to a lack of transport to the workplace or negative attitudes among employers and colleagues that a person with disabilities is unable to work; and their inability to participate in public affairs might result from the lack of electoral material in accessible formats such as Braille or voting booths that are physically inaccessible to persons with disabilities. This approach is referred to as the social model of disability. The UN Convention on the Rights of Persons with Disabilities<sup>6</sup> endorses this model and takes it forward by explicitly recognizing disability as a human rights issue. The Convention is filling an important protection gap in international human rights law, as it recognises disability as a legal issue rather than a mere welfare matter.

The decision to add a universal human rights instrument specific to persons with disabilities was born of the fact that, being theoretically entitled to all hu-

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<sup>6</sup> Available at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx> (Accessed 20.06.2016).

man rights, persons with disabilities have been still, in practice, denied those basic rights and fundamental freedoms that most people take for granted. At its core, the Convention ensures that persons with disabilities enjoy the same human rights as everyone else and are able to lead their lives as full citizens who can make valuable contributions to society if given the same opportunities as others. In the Convention, the focus is no longer on a perceived “wrongness” of the person, with the impairment seen as a matter of deficiency or disease. On the contrary, the Convention views disability as “pathology of society”, that is, as the result of the failure of societies to be inclusive and to accommodate individual differences. Societies need to change, not the individual, and the Convention provides a road map for such change. It is also about putting in place the policies, laws and programs that remove barriers and guarantee the exercise of civil, cultural, economic, political and social rights by persons with disabilities. To achieve a genuine exercise of rights, the policies, laws and programs that limit rights need to be replaced, such as: immigration laws that prohibit entry to a country based on disability; laws that prohibit persons with disabilities to marry; laws that allow the administration of medical treatment to persons with disabilities without their free and informed consent; laws that allow detention on the basis of mental or intellectual disability; and policies that deny medical care to a person because he or she has a disability. Moreover, programs, awareness-raising and social support are necessary to change the way society operates and to dismantle the barriers that prevent persons with disabilities from participating fully in society. Furthermore, persons with disabilities need to be provided with the opportunities to participate fully in society and with the adequate means to claim their rights.

The CRPD is not the first human rights instrument to deal with disability concerns. However, unlike its predecessors, it offers persons with disabilities an unprecedented level of protection. It is the first major human rights treaty of the 21<sup>st</sup> century, and addresses civil, political, economic and cultural rights.

The Convention is a complement to existing international human rights treaties and ensures that the world’s largest minority enjoys the same rights and opportunities as everyone else. It does not establish new rights for persons with disabilities; instead, it elaborates on what existing human rights mean for persons with disabilities and clarifies the obligations of states parties to protect and promote these rights. In order to ensure an environment conducive to the fulfilment of the rights of persons with disabilities, the Convention also includes articles on awareness-raising, accessibility, situations of risk and humanitarian emergencies, access to justice, personal mobility, and rehabilitation, as well as statistics and data collection.<sup>7</sup> It covers the many areas where persons with disabilities have been discrimi-

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<sup>7</sup> Report of the United Nations High Commissioner for Human Rights on progress in the implementation of the recommendations contained in the study on the human rights of persons with disabilities (A/HRC/4/75, para. 19), available at: <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disa->

nated against including access to justice; participation in political and public life; education; employment; freedom from torture, exploitation and violence, as well as freedom of movement. Under the Optional Protocol, individuals of states parties to the Protocol who allege violations of their rights, and who have exhausted national remedies, can seek redress from an independent international body.

The CPRD represented the culmination of many years of consistent advocacy by the disability community in their struggle for recognition of their rights. Both the strength of the text, and its signature on the opening day in March 2007 by representatives of 81 countries, are testimony to the effectiveness of their advocacy in highlighting the urgent need for action to address the human rights violations they face in countries throughout the world. The Convention marks a turning point: it asserts that the rights of people with disabilities must be recognised and respected on an equal basis with others; it provides a comprehensive and coherent analysis of the measures needed to overcome the discrimination, poverty, violence, neglect, isolation and denial of independence and human dignity they face. It also provides mechanisms to hold governments to account in implementing those measures. However, adoption and ratification, although vital, is obviously not sufficient. The Convention must also be implemented. Particular stress must be put on civil society organisations and they will continue to play a central role in ensuring that this happens. The advocacy that has been so successful at international level now needs to be replicated at national level, with those working for disability and for disabled people.

### **Changes in the European policy against discrimination based on disability**

Although the European Community (EC) has adopted and implemented instruments of disability policy since the mid-1970s, until the beginning of the 1980s there was no activity at all in the field of disability policy at a European level, except for a section in the Social Action program of 1974, which included a section on disability and employment. Between 1981 and 1996 different action programs and recommendations have been issued in the field of disability policy. A major turning point in the development of disability policy at EU level was in 1996 when the Communication of the European Commission<sup>8</sup> and the Resolution of the European Council<sup>9</sup> on Equal Opportunities for People with Disability were adopted. Both

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bilities/report-of-the-united-nations-high-commissioner-for-human-rights-on-progress-in-the-implementation-of-the-recommendations-contained-in-the-study-on-the-human-rights-of-persons-with-disabilities-ahrc.html (Accessed 20.06.2016).

<sup>8</sup> European Commission, 1996, Communication of the Commission on Equality of Opportunity for People with Disabilities, Brussels, COM(96) 406 final, available at: <http://aei.pitt.edu/3953/1/3953.pdf> (Accessed 20.06.2016).

<sup>9</sup> European Council, 1996, Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council of 20 December 1996 on Equal-

documents referred to the Standard Rules<sup>10</sup> of the UN as guiding principles for the disability policy at the EU level. Antidiscrimination and removing and identifying barriers to equal opportunities for people with disability were two of the most important issues in the European Disability Strategy that was adopted after 1996.

However, the EU only acquired the power to address disability discrimination in 1999 with the coming into force of the Amsterdam Treaty. The most important event in this respect was the inclusion of antidiscrimination article in the Amsterdam Treaty in 1997. According to article 13 of the EC Treaty<sup>11</sup> the Council may take ‘appropriate action’ to combat discrimination on grounds of sex, racial origin, religion or belief, sexual orientation, age and disability.<sup>12</sup> This article was not directly applicable in most European member states. To make it effective there was a need for further action from the European Council and Commission. Therefore, a significant step on basis of this article was the adoption of a framework directive on Equal Treatment in Employment and Occupation in 2000. Disability related discrimination is addressed in this Directive in which the term ‘reasonable accommodation’ is introduced. Art. 5 states that employers have a duty of reasonable accommodation with respect to candidates or employees with a disability. This would include, for example providing wheelchair access, adjusting working hours, adapting office equipment or simply redistributing tasks between the members of a team.<sup>13</sup> There is no question that the Directive has had a significant impact on the level of protection provided to victims of disability discrimination in the EU member states.<sup>14</sup> However, a corresponding legislation that prohibits discrimination based on disability beyond the workplace, and would be a step towards implementing the UN Convention, has not yet been adopted.

A step forward in banning discrimination outside the employment was taken by the European Commission in 2008. The Commission published a proposal for

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ity of Opportunity for People with Disabilities, Brussels, available at: [http://ec.europa.eu/employment\\_social/soc-prot/disable/com406/res\\_en.htm](http://ec.europa.eu/employment_social/soc-prot/disable/com406/res_en.htm) (Accessed 20.06.2016).

<sup>10</sup> UN, 1993, Standard rules on the equalisation of opportunity for persons with disabilities, available at: <http://www.un.org/esa/socdev/enable/dissre00.htm> (Accessed 20.06.2016).

<sup>11</sup> Now art. 19 TFEU.

<sup>12</sup> Art. 13, para. 1: “Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.

<sup>13</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, art. 5, OJ L303, 02.12.2000, p. 0016–0022, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0078> (Accessed 20.06.2016).

<sup>14</sup> Prior to the adoption of the Directive, only three member states prohibited employment related disability discrimination in civil law; today all 28 member states prohibit such discrimination, as does Norway.



a *Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*.<sup>15</sup> The proposal was presented as part of the ‘Renewed Social Agenda: Opportunities, access and solidarity in 21<sup>st</sup> century Europe’,<sup>16</sup> and accompanied the Communication ‘Non-Discrimination and Equal Opportunities: A Renewed Commitment’.<sup>17</sup> The proposal directive aims to address gaps in protection against discrimination against certain groups of the population, including persons with disabilities outside the labour market. During the preceding consultations different stakeholders, social partners and NGO had the opportunity to present their opinions and proposals. As far as the issue of disability discrimination is concerned of particular importance was the voice of the European Disability Forum. EDF have been lobbying for years for a disability-specific directive. However, the European Commission did not consider this concern and decided that a horizontal approach with a “multi-ground directive would be the appropriate response”, but “disability-related discrimination” will be “addressed in a special Article”<sup>18</sup> of the Directive. In fact, specific disability related discrimination is addressed in article 4 of the proposal stating that persons with disabilities shall be given effective non-discriminatory access to social protection, including social security and healthcare, social advantages, education, access to and supply of goods and other services which are available to the public, including houses<sup>19</sup> and provided with reasonable accommodation. Specifications about what is ‘reasonable’ are defined as follows: respective ‘measures should not impose a disproportionate burden, or require fundamental alteration [...] or require the provision of alternatives” taking into account “size and resources of the organisation, its nature, the estimated cost, the life cycle of the goods and services, and the possible benefits of increased access of persons with disabilities”.<sup>20</sup>

Since 2008 the Commission has been pushing a proposal for a new directive, which would impose a controversial idea of ‘equal treatment’ in other areas than employment, including education, social protection, healthcare, and access to goods and services including housing. This proposal is still being debated in the European Council, and we can see that it is fairly difficult for the EU and its stakeholders to execute prohibition of all forms of discrimination. It is due to the resistance expressed by national governments to this proposal. The main argument

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<sup>15</sup> Commission of the European Communities Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, Brussels, 2.07.2008, COM(2008) 426 final, 2008/0140 (CNS).

<sup>16</sup> COM (2008) 412.

<sup>17</sup> COM (2008) 420.

<sup>18</sup> Commission of the European Communities Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation...

<sup>19</sup> Art. 3, *Scope*, para. 1.

<sup>20</sup> Art. 4, *Equal treatment of persons with disabilities*.

against the draft Directive is that national standards would be undermined by weaker EU rules.<sup>21</sup>

## EU and the Convention

The ratification of the UN Convention by the EU<sup>22</sup> was a landmark in the fight for equal opportunities for all Europeans, and filling the an important protection gap in international human rights law, as it recognizes disability as a legal issue rather than a mere welfare matter, as it recognizes disability as a legal issue rather than a mere welfare matter. Still similarly important are mechanisms to ensure that CRPD provisions are actually put into practice and that disability is indeed mainstreamed in all EU policies.

The first EU report in the implementation of the Convention is a comprehensive account of the measures taken by the European institutions to ensure that the rights of people with disabilities are considered in all relevant legislative proposals as well as in implementation, monitoring and evolution of the EU policy. However, while the report contains a lot of information, some parts of the document are clearly lacking of critical evaluation of the presented facts.<sup>23</sup> In addition the European Commission has so far not announced a proposal for the European Accessibility Act nor give any indication about a follow-up the EU agenda for the rights of child, or any measures taken to align this agenda to the CRPD provisions on children with disabilities.

In relation to accessibility, mentioned in regards to several policies or initiatives, the report only makes very general recommendations with no indications of a clear timeframe. No specific provisions are brought forward, such as presenting information on alternative easy-to-read formats, which would support accessibility

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<sup>21</sup> Growing voices in several EU member states disagree with the EU's approach on discrimination, because they fear it would lead to inflexible overregulation and greater social control of enterprises and citizens on a large scale. They are concerned about a growing disrespect for the subsidiarity principle and that, if implemented, the EU's fundamental rights agenda would result in an even more far-reaching curtailing of each state's legislative power in the area of non-discrimination.

<sup>22</sup> The EU was the first regional organization to ratify it, in January 2011. All 28 member states have signed the CPRD and 25 of these have ratified it, while the remaining three (Finland, Ireland, and the Netherlands) are progressing towards ratification. EU member states that have ratified the document need to periodically inform the UN Committee on the Rights of Persons with Disabilities about the measures taken to implement the Convention. The Convention was the first comprehensive human rights treaty that the EU as a whole has ever ratified. Having ratified this document, the EU was called by the UN Committee, on the base of the Art. 35, to present work it has done on the implementation of the Convention since then. In June 2014 the European Commission published its first report. This report covers the period from the entry into force of the CPRD for the EU in January 2011 to December 2013.

<sup>23</sup> For ex ample, the 2008 proposal for an antidiscrimination legal framework in area outside employment is mentioned as a legislative proposal, despite the process having been postponed because of failure to achieve consensus among member states.

for people with intellectual disabilities. Moreover, the report itself is not provided in an accessible format and does not have an easy-to-read summary.

With all the publicity given to 2014 European elections, it is disappointing that political participation has not been acknowledged as an area where the EU could provide an impulse to end discrimination against citizens with disabilities.

In sum, while the report is clearly valuable, offering an extensive overview of policies related to the issue of disability in the EU, in my opinion the Commission could have taken a more proactive and ambitious approach, one that could help to move the agenda forward. In that respect, organisations of people with disabilities could have given valuable input, had they had sufficient time to comment on the report before its publication.

### **EDF Alternative report on the Rights of Disabled People at the EU**

On the occasion of the European Union's first report to the UN Committee on the Rights of Persons with Disabilities and to allow citizens with disabilities to give their view and cover gaps that the EU report has, the European Disability Forum (EDF)<sup>24</sup> prepared the Alternative Report on the implementation of the Convention by the EU, based on the expertise of its members all around Europe, civil society organisations and other stakeholders. The alternative report highlights that the overall purpose of the UN CRPD – to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities – has not been fully realised today in the EU. Freedom of movement, as one of the key principles and rights of all EU citizens, is not being met for persons with disabilities in the EU. They are still discriminated against in many areas of life and since the financial and economic crisis, are experiencing increased poverty and social exclusion. In fact, in the opinion of the report, the EU does not have a specific strategy aimed at the overall implementation of the CRPD by all its institutions. The main strategy on which the EU relies is the European Disability Strategy 2010–2020 which is limited in scope, lack funding for its implementation and does not contribute to reaching the targets on employment, social inclusion and poverty reduction for persons with disabilities foreseen in the Europe 2020 Strategy. The report calls for the development of a European Disability Pact to be included in the Europe 2020 Strategy as a horizontal flagship calling for the employment, social inclusion and poverty reduction of persons with disabilities, supported by a sufficient financial allocation.

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<sup>24</sup> EDF is the European umbrella organisation representing the interests of 80 million persons with disabilities in Europe. The mission of EDF is to ensure persons with disabilities have full access to fundamental and human rights through their active involvement in policy development and implementation in Europe. EDF is a member of the International Disability Alliance (IDA) and works closely with European institutions, the Council of Europe and the United Nations.

In order to bring closer the way the report estimates the EU implementation of the CPRD I will refer to the couple of areas where the rights of persons with disabilities are still far from being fulfilled. I will concentrate on: personal mobility, education, participation in political and public life and women and children with disabilities.

Although the EU has shared competences with member states in the area of transport which also includes Passengers' Rights, persons with disabilities are in practice restricted in their freedom of movement within the EU. They cannot for example transfer the social security benefits of their member states of origin when they move to a different member state temporarily, and when they move to a different member state permanently, they often have difficulties in getting their disability status recognised and face additional bureaucratic burdens.<sup>25</sup> This affects, amongst others, persons that make use of sign language interpreters or personal assistants. However, the EU has included in its report to the CRPD Committee information that it has already recognised the existing problems with portability of social security benefits and aims to promote the portability of these rights under the EU Disability Strategy. In addition, the EU has already achieved a mutual recognition of public health insurance schemes with the "European Health Insurance Card" (EHIC) which illustrates that the EU can do more to encourage member states to cooperate on social security related issues. In short, these obstacles occur mainly because of a lack of harmonisation of EU rules regarding portability of social security benefits and assistance as well as a lack of awareness of the particular challenges that persons with disabilities face in terms of mobility.

In the field of education the EU has supporting competence and its main aim is to encourage cooperation among member states and support their actions. The education system is the first step towards inclusive society and it plays a key role in defining the future for everybody, both from a personal point of view, as well as social and professional one. The education system has therefore, to be the key place to ensure personal development and social inclusion, which will allow children and youngsters with disabilities to be as independent as possible. The report shows that pupils and students with disabilities, especially those in need of high level support are often excluded or do not have adequate access to education services and the financial crisis has negatively influenced efforts towards inclusive education. Under the Employment Equality Directive persons with disabilities are protected against discrimination in education only as regards vocational training.<sup>26</sup> However, equal

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<sup>25</sup> EDF Freedom Guide, December 2011, p. 48–50, available at: <https://pl.scribd.com/document/92167752/Accessibility-Freedom-Guide> (Accessed 20.06.2016); L. Waddington, *Disability benefits and entitlements in European countries: mutual recognition and exportability of benefits. A synthesis of evidence provided by ANED country reports and additional sources*, December 2010, p. 135, available at: <http://www.disability-europe.net/downloads/76-aned-2010-task-7-disability-benefits-and-entitlements-report-final-2> (Accessed 20.06.2016).

<sup>26</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment...

opportunities can only be achieved if the right to inclusive education is granted at all levels through the adoption of relevant legislation which will prohibit any discrimination on the basis of disability outside employment. Particular attention of the report is put on learning experiences abroad which should be accessible to all students with disabilities. In fact The EU Regulation and student exchange programmes (e.g. Erasmus+) have been improved in recent years by including financial support for the mobility of students with disabilities. Yet, in practice disabled students still face numerous barriers when trying to access the national educational services of the country of destination (attitudinal, architectural, communication and information barriers<sup>27</sup> and lack of flexibility of curricula). According to the UN CRPD, persons with disabilities must have access to all levels of education including life-long learning.

The report calls for the European Commission to support EU countries in developing inclusive education systems by promoting the use of European funding instruments to fund both the training of staff and accessibility. The Commission should fund research on accessible pedagogical material and reasonable accommodation in education, paying special attention to children in need of high level support. The disability specific indicators should be included in the Europe 2020 Strategy.

Though, the EU Treaty and the EU Charter on Fundamental Rights recognise the rights of persons with disabilities to be free from discrimination in exercising their citizenship rights, including the right to vote and stand for elections<sup>28</sup> persons with disabilities face a series of legal and practical barriers that prevent them from exercising their right to participation in political and public life on an equal basis with others. The report points out that in the majority of EU member states, the deprivation of legal capacity of citizens with disabilities results in losing their right to vote.<sup>29</sup> Fifteen member states automatically deprive persons with disabilities under guardianship from the right to vote and six countries may deprive them after some sort of assessment.<sup>30</sup> Only a minority of countries allow persons with disabilities to fully participate in political life and elections. Even during the European elections in May 2014, some European citizens with disabilities were denied their basic right

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<sup>27</sup> For example, deaf and hard of hearing people are excluded from the Erasmus+ programme due to the lack of financing for the use of captioning or speech-to-text technology in the classroom. For more information, see the position paper on Education of the International Federation of Hard of Hearing people, April 2014, available at: <http://www.andrewjohnpublishing.com/articles/ahhm-volume-2-issue-5.pdf> (Accessed 20.06.2016).

<sup>28</sup> Art. 9 TFEU and art. 21 of the Charter recognise the right to be free from discrimination, including on the grounds of disability, and art. 26 recognises and respects the right of persons with disabilities to benefit from measures to ensure their independence, social and occupational integration and participation in the life of the community.

<sup>29</sup> Fundamental Rights Agency, *The right to political participation for persons with disabilities: human rights indicators*, Luxembourg 2014, p. 8, available at: <http://fra.europa.eu/en/publication/2014/indicators-political-participation-persons-disabilities> (Accessed 20.06.2016).

<sup>30</sup> *Ibid.*, p. 40.

to elect their representatives.<sup>31</sup> Barriers to the right to vote also take the form of inaccessible voting procedures, including inaccessible polling stations. Only 12 EU member states out of 28 have accessibility standards for all polling stations.<sup>32</sup> Moreover, most of the standards focus only on persons with physical impairments. Reasonable accommodation measures for blind persons, persons in need of high levels of support and persons with intellectual disabilities and their families are missing. In most member states, the official websites providing instructions for voting and information on candidates do not meet the internationally recognised standards for internet accessibility.<sup>33</sup>

Taking the above status quo into consideration the report called for the European Commission to adopt a Recommendation to member states as regards the right of European citizens to vote and stand for EU and local elections on an equal basis with others, which would prohibit the denial of voting rights on the basis of legal capacity, as well as to promote ambitious and accessible awareness-raising campaigns on the right to vote and political and public participation of all people with disabilities as well as promote exchange of good practices concerning accessible elections.

In the context of women with disabilities the report refers to the fact that the principle of gender equality between men and women and the relevant EU gender equality policies, such as the EU 2011–2020 Gender Equality Pact,<sup>34</sup> the EU Strategy for Equality between women and men (2010–2015)<sup>35</sup> and the EU Plan of Action on Gender Equality and Women’s Empowerment (2010–2015)<sup>36</sup> do not mainstream the rights of women and girls with disabilities. Therefore separate handling of gender and disability in EU policy has resulted in the invisibility of women with disabilities’ needs and women with disabilities continue being the victims of multiple discrimination.<sup>37</sup>

Women with disabilities constitute 16% of the total population of women in Europe. This figure is based on the current female population of just below 250 million, so in the EU there are approximately 40 million women and girls with

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<sup>31</sup> See Inclusion Europe’s campaign for the European Elections, available at: <http://www.e-include.info/votingforall/en> (Accessed 20.06.2016).

<sup>32</sup> Fundamental Rights Agency, *The right to political participation for persons with disabilities*..., p. 49.

<sup>33</sup> *Ibid.*, p. 46.

<sup>34</sup> As an annex to the Council conclusions on the European Pact for gender equality for the period 2011–2020, available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/lssa/119628.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lssa/119628.pdf) (Accessed 20.06.2016).

<sup>35</sup> EU Strategy for equality between women and men, European Commission, September 2010, available at: [http://ec.europa.eu/justice/gender-equality/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/index_en.htm) (Accessed 20.06.2016).

<sup>36</sup> Available at: [http://www.dev-practitioners.eu/fileadmin/user\\_upload/EU\\_GEAP.pdf](http://www.dev-practitioners.eu/fileadmin/user_upload/EU_GEAP.pdf) (Accessed 20.06.2016).

<sup>37</sup> *Ibid.*

disabilities. Women with disabilities remain in a clearly disadvantageous position within society and face intersectional discrimination in all areas of life, including, socio-economic disadvantages, social isolation, violence against women, forced sterilisation and abortion, lack of access to community services, low-quality housing, institutionalisation, inadequate health care and denial of the opportunity to contribute and engage actively in society.<sup>38</sup> The status of women with disabilities is not only worse than that of women without disabilities, but also worse than that of their male peers. This is especially so in rural areas, where matriarchal and primary economic systems, with fewer services and opportunities for this group than in urban environments, are still predominant. Therefore it is absolutely urgent for the EU to develop effective measures in order to mainstream disability in its gender policies, programmes and measures, as well as to design and develop specific positive action measures to achieve the advancement of women and girls with disabilities in the EU.

An integral part of the EU fundamental rights objectives set out by EU law is the promotion of children's rights. There are references to children's rights in art. 3 the TEU and art. 24 the EU Fundamental Rights Charter. Nevertheless the recognition of the specific situation of children with disabilities has largely been declaratory in relevant EU instruments (European Disability Strategy, EU Agenda for the Rights of the Child<sup>39</sup>) rather than underpinned by targeted measures addressing their specific needs or monitoring member states' respect of EU policies. The European education system is far from being fully inclusive. Consequently, according to the report, 22% of children and youth with disabilities leave school early, in contrast with 12% of their non-disabled peers.<sup>40</sup> Integrated child protection systems in the EU do not sufficiently address the needs of children with disabilities. While child protection is central in international legal frameworks on children's rights, concrete action for children with disabilities with measurable impact is yet to follow. As a consequence, children with disabilities face higher risk of violence, abuse, neglect and bullying than other children.

The report recommends that the EU Agenda for the Rights of the Child should be followed by a new, forward-looking, strategic instrument that takes into account the rights of all children, including children with disabilities and their families. In the report opinion the participation of children and youth with disabilities in the decisions that concern them is imperative, as is a mechanism for monitoring

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<sup>38</sup> EDF 2<sup>nd</sup> Manifesto on the rights of women and girls with disabilities in the EU, 2011, p. 6, available at: <http://www.womenlobby.org/European-Disability-Forum-publishes-2nd-Manifesto-on-the-Rights-of-Women-and?lang=en> (Accessed 20.06.2016).

<sup>39</sup> An EU Agenda for the Rights of the Child, COM/2011/0060 final, available at: <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52011DC0060> (Accessed 20.06.2016).

<sup>40</sup> Member States' Policies for Children with Disabilities, available at: [http://www.euro-parl.europa.eu/RegData/etudes/etudes/join/2013/474416/IPOL-LIBE\\_ET\(2013\)474416\\_EN.pdf](http://www.euro-parl.europa.eu/RegData/etudes/etudes/join/2013/474416/IPOL-LIBE_ET(2013)474416_EN.pdf) (Accessed 20.06.2016).

the actual impact of EU guidance, for example the EU Child Rights Forum.<sup>41</sup> It is important to involve children and youth with disabilities themselves.

I would also like refer to the important issue which was on the agenda of this report: the impact of the economic crisis on the rights of persons with disabilities. The report emphasises that the economic crisis that hit Europe in 2008 is not over yet and that actually the consequences have even worsened now due to the reckless austerity measures taken. EDF, addressing the impact of the economic crisis across countries on persons with disabilities and their families and analyzing recovery measures taken by governments, denounces the degradation of work, of participation and mobility for persons with disabilities, and the worsening of mental health conditions of the general population. According to this document the impact of the economic crisis on persons with disabilities varies across Europe. For example, in some countries disability-related benefits have been frozen or cut. The report points out that that by the EU ratification of the Convention persons with disabilities have seen their rights acknowledged and reaffirmed. It is due to the fact that Convention introduces a new concept of disability, understood now as the result of the interaction between persons with impairments, on one hand, and on the other attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others. Therefore this evolving concept is at the basis of the social model and focuses on the rights of persons with disabilities to economic, political and social participation on an equal basis with others. However, in the meantime, the economic and financial downturn has been closing indiscriminately the windows of opportunities opened by the Convention, and unfortunately disability remains a factor of social exclusion in many areas of a person's life. The report indicates that the main domains affected by the crisis in almost all EU countries, are: disability allowances and support to families, mobility and independent living, employment, education, mental health.

In the concluding notes, the FDP called European Commission for effective enforcement of the existing legislative framework, as well, as development of new legislation, in the area of antidiscrimination, social services and mental health both in the workplace and behind. It set two parallel approaches that should be followed: on one hand, disability specific programs or initiatives at European and national level should be developed and aimed at overcoming particular disadvantages or barriers. On the other hand, it is important to ensure that persons with disabilities are included in the mainstream services and programs on education and vocational training, employment, entrepreneurship, and development.

It is also significant to refer to the Shadow report on the implementation the Convention, submitted by the European Network of Independent Living (ENIL).

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<sup>41</sup> The European Forum on the Rights of the Child is a permanent group for the promotion of children's rights in the EU's internal and external action. It is chaired by the Commission and meets annually.



As a member of EDF, ENIL<sup>42</sup> has contributed to the EDF report with a shadow report on the implementation of art. 19 of the UN CRPD in the EU. The aim of this report has been to provide the Committee on the Rights of Persons with Disabilities with information that will be of assistance when assessing the extent to which the EU has complied with its obligations under art. 19 which sets out the right to choose where, with whom and how to live one's life. The report focuses on two specific areas: the use of European Structural and Investment Funds to promote independent living and the promotion of personal assistance as an essential element of independent living. It is of high importance to stress that the concept of independent living,<sup>43</sup> being older than the Convention, has played a key role in the drafting of this document, especially art. 19.<sup>44</sup> Furthermore, it is underpinning other articles. In fact none of them can be realised without independent living. Independent living is the daily demonstration of human rights-based disability policies and is possible through the combination of various environmental and individual factors that allow disabled people to have control over their own lives. This includes the opportunity to make choices and decisions regarding where to live, with whom to live and how to live. It is important to point out that independent living is for all disabled persons, regardless of the level of their support needs. It means that services must be accessible to all and provided on the basis of equal opportunity, allowing disabled persons flexibility in their daily life. Independent living also requires that the built environment and transport are accessible and that there is availability of technical aids, access to personal assistance and/or community-based services. One of the important elements of the independent living is deinstitutionalization as a political and social process. Deinstitutionalization provides for the shift from institutional

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<sup>42</sup> The European Network on Independent Living (ENIL) is a Europe-wide network of people with disabilities. ENIL represents the disability movement for human rights and social inclusion based on solidarity, peer support, deinstitutionalisation, democracy, self-representation, cross disability and self-determination. ENIL works directly with individual, organizations (mainly Centres of Independent Living), politicians, social agents, media, the business world and any individual organizations interested in learning about Independent Living, values, principles and its practical application.

<sup>43</sup> Independent living derives from the Independent Living movement that started in the late 1960s in Berkeley, California as a grassroots movement.

<sup>44</sup> Art. 19 of the UN CRPD states: "Living independently and being included in the community. States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that: a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on equal basis with others and are not obliged to live in a particular living arrangement; b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance, necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community; c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs".

care and the other isolating and segregating settings to independent living. Essential to the deinstitutionalisation process is the provision of affordable and accessible housing in the community, access to public services and personal assistance. Deinstitutionalisation is strictly connected with the community-based services which requires two elements: political and social approach. The community-based services consists of policy measure for making all public services, such as housing, education, transportation, health care and other services and support, available and accessible to persons with disability in mainstream settings. Having access to mainstream services, persons with disability will have the opportunity to live as equal citizens.

Although EU funding instruments (e.g. European Structural and Investment Funds) can be used to fund social and health infrastructures to promote transition from institutional to community-based services, as well as for accessibility and equal opportunities for persons with disabilities, the institutionalisation of persons with disabilities has been exacerbated by the use of Structural Funds by some member states to maintain and promote a system of institutional care that excludes persons with disabilities, rather than to develop community-based alternatives in line with the CRPD. Furthermore, some of the “community-based” or “independent living” services which are being supported, in fact remain institutional in character due to the fact that residents are not able to choose where/with whom they will live, and staff are not properly trained to work in the new services.<sup>45</sup> This leads to a continuation of human rights violations in these institutions within the EU. That is the reason, why I have decided to refer to this special report, which is concerned that across EU persons with disabilities, especially persons with intellectual and/or psychosocial disabilities still live in institutions rather than in local communities. They face significant barriers to independent living and being included in the community. For example, large numbers of people with disabilities continue to be placed in long-stay residential care settings in which serious human rights abuses are known to occur. There is a disproportionate adverse impact on people with disabilities of governments’ austerity measures and the progress towards achieving the transition from institutional care to community-based alternatives remains slow and uneven. Despite their relevance to the CRPD and the significant negative impact on the lives of people with disabilities, the EU report gives insufficient attention to the problems and challenges faced by people with disabilities living in the EU, in relation to the right to independent living. It fails to provide a realistic picture of the current situation of people with disabilities, with the corresponding problem that there is little discussion

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<sup>45</sup> European Network of Independent Living (ENIL), European Coalition for Community Living (ECCL), *Briefing on structural funds investments for people with disabilities: achieving the transition from institutional care to community living*, December 2013, p. 11–12, available at: <http://www.enil.eu/wp-content/uploads/2013/11/Structural-Fund-Briefing-final-WEB.pdf> (Accessed 20.06.2016).

on how the continuing widespread and weighty barriers to achieving the goals set out in the EU Disability Strategy 2010–2020<sup>46</sup> might be addressed.

The report further notes, that in spite of changing regulations in different member states, the ESI Funds (European Structural and Investment Funds) are being used for maintenance of residential institutions rather than for development of support services for persons with disabilities in local communities. The final conclusions of the report state that the EU should develop an approach to guide and foster deinstitutionalisation, and to strengthen the monitoring of the use of ESI Funds, in order to ensure they are being used strictly for the development of support services for persons with disabilities in local communities and not the re-development or expansions of institutions. In case, the obligations to respect fundamental rights of persons with disability by a member state are not met, the EU should suspend, withdraw and recover payments.

In short, I will also refer to the UN CRPD Committee Concluding Observations<sup>47</sup> on the Initial CRPD report of the EU. They are concurrent with the opinions of the European disability movement presented above. The Committee didn't only submit considerations how to avoid discrimination, but urged the EU to ensure that all forms of discrimination are prohibited. As one of the most important requirements for an effective prohibition of discrimination the Committee considers, to provide reasonable accommodation for persons with disabilities in areas of social protection, health care, education, provisions of goods and services. In many EU countries this does not work. So far, the majority of the EU member states have not met the requirements of art. 5 section 3 CRPD to take all appropriate steps to ensure that reasonable accommodation is provided to eliminate discrimination. The reason is that the legal term "reasonable accommodation" is not defined in many national laws of the EU member states in such a way that a person with disability who is suffering from discrimination can go to the court to receive instant legal support to fight against discrimination. Practical training of justice personnel is required to implement the concept of antidiscrimination laws in the EU and, in the opinion of the Committee, it is of utmost importance that the EU takes action to start and support such trainings. The Committee expressed not only concern, but "deep concern" with regard to the participation in political and public life (art. 12 and 29 CRPD). The reason is that across Europe many persons with intellectual or psychosocial disabilities (dementia, or severe brain injuries) are deprived of their legal capacity which in fact means very often that they are dependent from guardians or third persons, who decide instead of them where to live, how to live, to receive (or

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<sup>46</sup> European Disability Strategy 2010–2020: a renewed commitment to a barrier-free Europe initial plan to implement the European Disability Strategy 2010–2020. List of actions 2010–2015, COM(2010) 636 final, SEC(2010) 1323 final.

<sup>47</sup> In August 2015, the Committee issued its Concluding Observations on the report of the EU and raised several concerns, see <https://www.includ-ed.eu/newsandevents/eu-receives-recommendations-un-committee-rights-persons-disabilities> (Accessed 20.06.2016).

not) inclusive education, where to work etc. This third persons and not the disabled persons themselves decide how to exercise their rights including important human rights such as the right to live independently (art. 19 CPRD), to express an opinion (art. 2 CPRD) and the respect of privacy (art. 22 CPRD). The next important issue tackled by the Committee is living independently and being included in the community (art. 19 CPRD). The Committee is concerned that in many EU countries persons with disabilities still live in institutions or comparable arrangements rather than in local communities together with persons of their choice. The Committee claims to foster deinstitutionalization and to ensure that the European Structural and Investment Funds are not misused any longer for the redevelopment and expansion of institutions. Instead the ESI-Funds should be used for the development of support services in local communities and for projects and training which aim at enabling all persons with disabilities to make their own decisions, to express their will in different formats of communication as described in art. 2 CPRD.

## **Conclusions**

There is no question, that by ratifying the UN Convention, the EU agreed to take important steps for equal rights and full inclusion of persons with disabilities in all areas of life. However, viewing disability from a human rights perspective involves an evolution in thinking and acting by states and all sectors of society so that persons with disabilities are no longer considered to be recipients of charity or objects of others' decisions but holders of rights. A rights-based approach seeks ways to respect, support and celebrate human diversity by creating the conditions that allow meaningful participation by a wide range of persons, including persons with disabilities. Protecting and promoting their rights is not only about providing disability-related services. It is about adopting measures to change attitudes and behaviours that stigmatize and marginalize persons with disabilities. It is also about putting in place the policies, laws and programs that remove barriers and guarantee the exercise of civil, cultural, economic, political and social rights by persons with disabilities. To achieve a genuine exercise of rights, the policies, laws and programs that limit rights need to be replaced, such as: immigration laws that prohibit entry to a country based on disability; laws that prohibit persons with disabilities to marry; laws that allow the administration of medical treatment to persons with disabilities without their free and informed consent; laws that allow detention on the basis of mental or intellectual disability; and policies that deny medical care to a person because he or she has a disability. Moreover, programmes, awareness-raising and social support are necessary to change the way society operates and to dismantle the barriers that prevent persons with disabilities from participating fully in society.

Furthermore, persons with disabilities need to be provided with the opportunities to participate fully in society and with the adequate means to claim their rights. Persons with disabilities will not be assimilated into their societies through

the goodwill of the powerful. Disabled people will change society through their increased participation, their skills, experience and insights.

In conclusion, it is necessary to point out that the large number and diversity of legal acts concerning disabled people raises social awareness in this area, at the same time causing, however, an informational chaos in which it is hard to point to the instruments of efficient execution of such rights. The EU's anti-discrimination legislation is inconsistent in its scope and creates a hierarchy between the different grounds of discrimination. Persons with disabilities are only protected against discrimination in employment and vocational training.<sup>48</sup> Anti-discrimination protection for other discriminatory grounds, such as race, ethnic origin<sup>49</sup> and gender<sup>50</sup> goes much further. Moreover, EU anti-discrimination legislation<sup>51</sup> does not protect against multiple or intersectional discrimination (based on age, sexual orientation, gender identity, race, ethnic and social origin). As pointed out above, a proposal for a Directive<sup>52</sup> which would extend this protection to other areas of life, such as social protection, social advantages, health, access to and supply of goods and other services available to the public, including housing, education and insurance has been on the table of the Council of the European Union since 2008.

### **Edukacja praw człowieka w kontekście europejskiej polityki przeciw dyskryminacji osób z niepełnosprawnością. Wyzwania stojące przed osobami niepełnosprawnymi w sferze wolności i bezpieczeństwa**

Ochrona praw i wolności, a także należytego bezpieczeństwa osób z niepełnosprawnością to ważne wyzwanie dla edukacji praw człowieka w społeczeństwach i państwach współczesnej Europy. Oznacza zmianę perspektywy – zamiast wyłączności tradycyjnej pieczy administracyjnej w formie pomocy lub opieki społecznej, wciąż ważnej i potrzebnej, wybieramy perspektywę osoby z niepełnosprawnością, z poszanowaniem jej godności, potencjału i woli realizacji własnych praw, takich jak prawo do pracy, edukacji czy prawo wyborcze. Specyficzna sytuacja osób z niepełnosprawno-

<sup>48</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment...

<sup>49</sup> Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L180/22, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0043> (Accessed 20.06.2016).

<sup>50</sup> Directive 2006/54/EC of 2 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, OJ L204/23, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006L0054>, and Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L373/37, available at: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32004L0113> (Accessed 20.06.2016).

<sup>51</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment...

<sup>52</sup> Proposal of 2 July 2008 for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM/2008/0426 final, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008PC0426> (Accessed 20.06.2016).

ścią sprawia, że często na pierwszy plan (w sposób zrozumiały przesłaniając subiektywnie wszystko inne) wysuwa się prawo do leczenia, uzyskania środków pomocniczych czy terapii, jednakże równie świadomość nierównego traktowania w innych dziedzinach – od edukacji po prawa polityczne i bezpieczeństwo, które stanowi współcześnie jedną z najważniejszych potrzeb ludzi, szczególnie tych borykających się z różnymi formami niepełnosprawności. Wzrostowi tej indywidualnej świadomości nie towarzyszą wystarczająco szybkie zmiany w działaniach państw.

Celem opracowania jest ukazanie roli i znaczenia kwestii prawno-instytucjonalnych jako ważnego uwarunkowania bezpieczeństwa osób niepełnosprawnych. Artykuł zawiera prezentację międzynarodowych regulacji prawnych dotyczących praw osób niepełnosprawnych, poprzedzoną omówieniem pojęć dotyczących praw człowieka oraz zarysem historycznym międzynarodowych aktów zawierających gwarancje tych praw.

Pomimo że na przestrzeni wieków powstało wiele dokumentów normatywnych regulujących kwestie związane z funkcjonowaniem tej grupy w społeczeństwie, osoby niepełnosprawne ciągle mogą mieć poczucie dyskryminacji i wykluczenia z wielu obszarów działalności ludzkiej. Współczesność wymaga, by kwestie związane z pełnym, a przez to aktywnym ich uczestnictwem w głównym nurcie życia społecznego znalazły swoje odzwierciedlenie w przepisach prawnych. Autorka formułuje tezę, że stworzenie instrumentów normatywnych pozwoli osobom niepełnosprawnym dochodzić własnych praw oraz wymagać ich respektowania przez innych. Niezwykle ważnym przedsięwzięciem jest także powoływanie instytucji stojących na straży przestrzegania przez organy państwowe, podmioty pozarządowe i społeczeństwo tych uregulowań oraz służących pomocą i wsparciem osobom niepełnosprawnym.

**Słowa kluczowe:** edukacja, polityka antydyskryminacyjna, osoby z niepełnosprawnością, prawa człowieka, równość

## **Human Rights Education in the Context of the European Policy against Discrimination based on Disability: the Main Challenges Faced by the Disable Population in the Area of Freedom and Security**

The purpose of this paper is twofold. First, it aims to present the current challenges and opportunities facing by the European antidiscrimination policy, and second it aims to move beyond the myth and stereotypes to take a closer look at 'rights parity' for disable people. It seeks to offer an overview of the problems of educational discrimination and disadvantage faced by disabled people, and the current legislative and policy measures for addressing these at international and EU levels. It examines some of the gaps, and barriers to effective implementation of measures in the field of education and training, highlights areas where further efforts is needed and makes some recommendations for actions at European, national and educational institutional levels.

The author formulates thesis saying that the large number and diversity of legal acts concerning disabled people raises social awareness in this area, at the same time causing, however, an informational chaos in which it is hard to point to the instruments of efficient execution of such rights. Therefore, it is vital for their real respect that the obedience to those laws is monitored both by especially nominated public subjects and non-governmental organizations.

Although, in recent years, there has been a considerable change approach to close the protection gap and ensure that persons with disabilities enjoy the same standards of equality rights and dignity as everyone else, the most compelling human rights issues of our day – built environments and accessibility of persons with disabilities, still requires constant attention.

Persons with disabilities face discrimination and barriers that restrict them from participating in society on an equal basis with others every day. They are denied their rights to be included in the general school system, to be employed, to live independently in the community, to move freely, to vote, to enjoy social protection, to access justice, and to choose medical treatment.

**Key words:** education, antidiscrimination policy, persons with disabilities, human rights, equality