

## **EDF questionnaire on implementation of article 5 of the CRPD at the national level**

The European Disability Forum is currently preparing its third Human Rights Report on the issue of equality and non-discrimination. This questionnaire aims at collecting up-to-date information and views on organisations of persons with disabilities on the implementation of article 5 of the CRPD in EU Member States.

We would be very grateful for your participation in filling the questionnaire and sending it to Marine Uldry ([marine.uldry@edf-feph.org](mailto:marine.uldry@edf-feph.org)) **by Friday 22 June 2017**.

### **Article 5 - Equality and non-discrimination**

1. 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.
2. 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.
3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.
4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

#### **1. National framework**

##### Legislative framework

- a) Please inform on the anti-discrimination framework in your country.

Do the existing anti-discrimination legislation/provisions include an explicit prohibition of discrimination on the basis of disability **across all sectors and areas of life**? Please specify which areas of life are covered and for which groups of persons in society?

The Fundamental Law Hungary guarantees the fundamental rights to everyone without discrimination and in particular without discrimination on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status. Hungary promotes the achievement of equality of opportunity and social inclusion as well as equal opportunities for persons living with disabilities by means of special measures (para 4 (Article XV paras 2, 4 and 5)

The Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities sets out that pursuant to the principle of equal treatment, all natural persons abiding in the area of the Republic of Hungary and any groups thereof, as well as legal entities and organisations without legal entity, shall be treated with the same respect and deliberation and their special considerations shall be equally respected. (Article 1).

These provisions do not explicitly mention the prohibition of discrimination in all sectors and areas of life, however it is implied in them that is more crystalized in the jurisprudence of the Hungarian courts and authorities.

Does the anti-discrimination legislation encompasses **all forms** of discrimination on the basis of disability, including the **denial of reasonable accommodation** and **discrimination by association** with persons with disabilities, **perceived disabilities, past and future disabilities**

**and multiple and intersectional discrimination?** Is the denial of reasonable accommodation explicitly recognized as a prohibited form of discrimination in all areas of law?

Based on the above, Hungarian legislation generally prohibits discrimination based on disability. Therefore, denial of reasonable accommodation and discrimination by association with persons with disabilities, perceived disabilities, past and future disabilities and multiple and intersectional discrimination are not explicitly mentioned in any legislative acts. Moreover, the principle of reasonable accommodation appears only in the area of employment, and it is not sufficiently clear. The conditions of implementation and its sanction system have not been established yet. Consequently, currently it is an empty notion that cannot be enforced in practice because stakeholders, employers, and authorities interpret it differently and their own way or even they totally ignore it. In Hungary the duty to provide reasonable accommodation is not expressly mentioned beyond employment. Moreover, the denial of reasonable accommodation is not considered as a form of discrimination, therefore there is no consequence if its obligation is not fulfilled. Hungarian law contains reference to reasonable accommodation only in the Hungarian Labour Code. Among the 'fundamental obligations', it suggests that employers should provide reasonable accommodation, but is not mandatory: In the employment of persons with disabilities appropriate steps shall be taken to ensure that reasonable accommodation is provided. (Labour Code Section 51 (5)) The principle of reasonable accommodation can also be read from relevant provisions of Article 15 of Act XXVI of 1998 on the rights of persons with disabilities (Fot.), but it also cannot be enforced.

Does the law allow different legal time frames on termination of pregnancy that discriminate on the basis of disability (termination of pregnancy based on "foetus deficiency")?

Yes. According to Act LXXIX of 1992 on the protection of life of the foetus as a general rule, pregnancy may be terminated until the 12th week of the pregnancy if the foetus is presumably suffer severe disability or other impairment. In addition, pregnancy may also be terminated until the 18th week of the pregnancy if the woman has limited or no legal capacity. Moreover, it can be terminated until the 20th - or if the diagnosis is delayed until 24th week -, if the possibility of genetic harm of the foetus is 50 % or more. (Article 6 para 1 -3)

### Practice

- b) Are policies and programmes, including affirmative-action measures, allocated with sufficient financial and human resources, to achieve *de facto* equality of persons with disabilities?

There are some policies and programs aiming at reducing inequalities (e.g. National Action Plan of the implementation of National Disability Program for 2015-18) however, their implementation and results are not sufficiently monitored and followed-up.

- c) Are measures adopted to ensure that reasonable accommodation is provided in public and private sectors?

Currently, the principle of reasonable accommodation exists only at legislative level that cannot be enforced in practice.

- d) What are the measures adopted by the State to ensure appropriate dissemination and awareness-raising about anti-discrimination frameworks, particularly among persons with disabilities and their representative organizations?

The Fundamental Rights Commissioner and the Hungarian Equal Treatment Authority do awareness-raising campaigns about anti-discrimination framework. Our federation closely cooperates with both institutions.

- e) What measures did the State adopt to prevent, investigate and sanction all forms of discrimination against persons with disabilities and to ensure effective, accessible and affordable access to remedies by persons with disabilities?

Article 27 of the Fot. declares that if any person is discriminated based on his/her disability he/she may turn to the courts claiming the violation of his/her personal rights according the general rules of the civil law. Persons with disabilities may also turn to the Equal Treatment Authority, the public administrative body with the overall responsibility to ensure compliance with the principle of equal treatment. They may also to the Commissioner for Fundamental Rights.

- f) What is the mandate of equality bodies in relation to discrimination based on disability in your country?

In Hungary, the main equality bodies are: the Commissioner for Fundamental Rights and the Equal Treatment Authority.

#### Fundamental Rights Commissioner

The Commissioner for Fundamental Rights gives an opinion on the draft rules of law affecting his/her tasks and competences; on long-term development and land management plans and concepts, and on plans and concepts otherwise directly affecting the quality of life of future generations; and he/she may make proposals for the amendment or making of rules of law affecting fundamental rights and/or the recognition of the binding nature of an international treaty.

The Commissioner surveys and analyses the situation of fundamental rights in Hungary, and prepares statistics on those infringements of rights in Hungary which are related to fundamental rights. Therefore, the Commissioner submits his/her annual report to the Parliament, in which he/she gives information on his/her fundamental rights activities and gives recommendations and proposals for regulations or any amendments. The Parliament shall debate the report during the year of its submission. In the course of his/her activities, the Commissioner cooperates with organisations aiming at the promotion of the protection fundamental rights. The Commissioner for Fundamental Rights may also initiate the review of rules of law at the Constitutional Court as to their conformity with the Fundamental Law. Additionally, the Commissioner participates in the preparation of national reports based on international treaties relating to his/her tasks and competences, and monitors and evaluates the enforcement of these treaties under Hungarian jurisdiction.

Anyone may turn to the Commissioner for Fundamental Rights, if in his/her judgement, the activity or omission of the public and/or other organs performing public duties infringes a fundamental right of the person submitting the petition or presents an imminent danger. When the person reporting has exhausted the available administrative legal remedies, not including the judicial review of an administrative decision, or if no legal remedy is available to him or her.

### **Equal Treatment Authority**

#### Personal scope of the inquires

According to Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities the principle of equal treatment shall be observed by a) the Hungarian State, b) local and minority governments and all bodies, c) organisations exercising powers as authorities, d) armed forces and policing bodies, e) public foundations, public bodies, f) organisations performing public services, g) institutions of elementary and higher education (hereinafter collectively: educational institutions), h) persons and institutions providing social care and child protection services, and child welfare service, i) museums, libraries, elementary educational institutions, j) voluntary mutual insurance funds, private pension funds, k) entities providing health care, l) parties, and m) budgetary organs that do not belong to points a)-l) in the course of establishing their relationships, in their relationships, in the course of their procedures and measures. In addition, the following persons shall observe the principle of equal treatment in respect of the relevant relationship: a) those who make a proposal to persons not previously selected to enter into contract or invite such persons for tender, b) those who provide services or sell goods at their premises open to customers, c) self-employed persons, legal entities and organisations without a legal entity receiving state aid, in respect of their relationships established in the course of their utilisation of such a state aid, from the time when the state aid is utilised until the competent authorities can audit the utilisation of the state aid in accordance with the applicable regulations; and d) employers in respect of employment relationships and persons entitled to give instructions in respect of other relationships aimed at employment and relationships directly related thereto.

#### Tasks:

The Authority a) based on an application or in cases defined herein, conducts ex officio an investigation to establish whether the principle of equal treatment has been violated, and make a decision on the basis of the investigation; b) pursuant to the right of claim enforcement in the public interest, initiates a lawsuit with a view to protecting the rights of persons and groups whose rights have been violated; c) reviews and comments on drafts of legal acts concerning equal treatment; d) makes proposals concerning governmental decisions and legislation pertaining to equal treatment; e) regularly informs the public and the Government about the situation concerning the enforcement of equal treatment; f) in the course of performing its duties, co-operates with the social and representation organisations and the relevant state bodies; g) continually provides information to those concerned and offer help with acting against the violation of equal treatment; h) assists in the preparation of governmental reports to international organisations, especially to the Council of Europe concerning the principle of equal treatment; i) assists in the preparation of the reports for the Commission of the European Union concerning the harmonisation of directives on equal

treatment; j) prepares an annual report to the Government on the activity of the Authority and its experiences obtained in the course of the application of this Act.

### Sanctions

If the Authority has established that the provisions ensuring the principle of equal treatment have been violated, they may a) order that the situation constituting a violation of law be eliminated, b) prohibit the further continuation of the conduct constituting a violation of law, c) publish its decision establishing the violation of law, d) impose a fine, e) apply a legal consequence determined in a special act. The legal consequences can also be applied collectively. The amount of the fine inflicted in accordance with can be from fifty thousand to six million HUF.

- g) Are statistics on the number and percentage of claims of discrimination on the basis of disability, disaggregated by sex, age, barriers identified and the sector in which discrimination occurred available in your country? (if yes please share)

We do not have any data available concerning the claims of discrimination on the basis of disability. Moreover, there are no statistics disaggregated by the type of disability in particular concerning persons with physical disabilities.

- h) Please provide information on cases that resulted in sanctions.

After reviewing the latest (2015-18) jurisprudence of the Equal Treatment Authority, cases concerning persons with physical disabilities resulted in sanctions mainly concerned access to public services and/or buildings. The majority of the cases resulted in ordering to eliminate the situation constituting a violation of prohibition of discrimination. In several cases, the procedure ended with settlement.

## **2. Views of OPDs**

- i) In your opinion, what are the weaknesses and strengths of implementation of Article 5 in your country?

Shortcomings of the relevant legislation concerning the rights of persons with disabilities resulting in shortcomings in practical implementation Article 5 as it was demonstrated concerning the principle of reasonable accommodation.

Additionally, the Government have not set out deadlines for providing full accessibility to public services. The deadline for making public services accessible have been repealed in Hungary and Act XXVI of 1998 on the Rights and Equal opportunities of Persons with Disabilities states that persons with disabilities shall be provided with equal access to public services by taking into account the special needs of different groups of persons with disabilities. Licences are given to built environment even if it fails to completely meet the legal requirements of accessibility. Accessibility can only be enforced through judicial procedures. Another deteriorating tendency is that persons using mobility scooters are not allowed to use low-floor public transport buses, due to a forensic expert's opinion declaring – among others

- that the scooters are not safe for use. Moreover, public transport has limited accessibility, as e.g. 8% of interurban buses are low-floor.

As regards the mandate of the anti-discrimination bodies in Hungary, the mandate of Hungarian Commissioner for Fundamental Rights is more limited than in other European countries (e.g. in Poland).

j) What are your current advocacy points?

We are committed to ensure equality and non-discrimination for persons with disabilities. In order to achieve the adequate implementation of Article 5 of the CRPD we regularly negotiate with the Hungarian Government concerning various matters including reasonable accommodation. Our aim is to contribute to the establishment of the suitable legal framework that can be enforced in practice. Currently, we are implementing a transnational project called “The World is More Colourful with Us” – Reasonable accommodation in everyday lives of persons with physical disabilities. The aim of the project is to improve the quality and accessibility of public services in Hungary as a basic requirement of providing equal opportunities for all. Participants will examine the implementation of the reasonable accommodation principle through international cooperation and network building. The project aims to identify best practices and make recommendations in order to determine the meaning of such notions as appropriate modification, disproportionate burden or enjoyment of human rights on an equal basis with others. Based on the results of the project, we will make recommendations to the Government for legislative changes.

In February 2018 we built up and started to run a long-term project called *EFOP-1.1.5-17-2017-0004 „Without Barriers” – info-communication accessibility for persons with physical disabilities* which aims at providing possibilities to persons with severe impairments by finding the appropriate assistive technology, tools and training-system for independent communication and life. In the framework of our project the complex info-communication accessibility for more than 600 Hungarian persons with physical disabilities will be realized, by which that a lot of IT tools of info-communication should be accessible for persons with severe and cumulative disabilities in communication difficulties providing possibilities to independent life. The main goals of our project are to stimulate and promote real social inclusion of the persons with physical disabilities and optimize their access to public services. One of the projects’ objectives is to provide adequate support that could connect persons with severe and cumulative disabilities with the public service opening possibilities to manage their administrative affairs independently.

k) Please give examples of good practices (if any).

**Any other information you would like to share with us?**

Hungary has replacement plans only regarding nursing and caring homes/institutions of persons with disability, and has no plans regarding rehabilitation institutions of persons with disabilities. The deinstitutionalization has begun, but at the same time, the tender named ‘Development of conversion from institutional care to community-based services – replacement of institutional place’ no. HRDOP 2.2.2-17, allowing the use of funds from the European Union, contains a provision regarding a

territorial restriction of the project: it defines that the places of implementing the development may be in the less developed regions of Hungary. It means that the persons moving out from the institution may not move to Budapest and its surroundings. In the less developed regions the level of community based services is low and/or they are not or accessible. Persons with disabilities of high support needs (persons with severe, multiple disabilities or people with autism) are very often totally ousted from the social care because their care is expensive and professional human resource-intensive. They are also excluded from the desinstitutionalization process.

As of 1 January 2017 Article 7 Section (2) point a) of the Act XXXI of 1997 on the protection of the child and on the management of public guardianship sets out that 'The child has the right to – in its adoptive family or in other forms of substitutive service – care substituting parental or other relative's care. The temporary care and home placement of the child shall be primarily provided at foster parents. In case of children under 12 years, the obligation for placing them at foster parent can be waived only if the chronically ill, severely disabled child's placement at foster parents is not in the best interest of the child, or because it is not possible due to his/her state ..." Hungary also failed in providing a wider family environment or other alternative care in family-based communities in the absence of parental care. Based on the above-mentioned, in our view, Hungary discriminates persons not only by disability but discriminates disabled persons by their conditions.