

Work Forum on the Implementation of the UN Convention on the Rights of Persons with Disabilities in the EU and the Member States

13 May 2019, 9:00-17:00

Organised by the European Commission, DG EMPL
Charlemagne Building, Alcide de Gasperi Room

11.30 Session: Claiming Rights under the UNCRPD: How and Where?

Presentation: The European Ombudsman and the enforcement of the UNCRPD

Ladies and Gentlemen,

Thank you to DG Employment in the European Commission for inviting the Office of the European Ombudsman to speak today.

I will talk to you about our work handling complaints made against the institutions, bodies, offices and agencies of the European Union.

As Ms. Emily O'Reilly, the European Ombudsman, has said "*genuine engagement on disability issues means translating words on a page into practical, observable and measurable initiatives, into ways in which the capacity of people with disabilities to participate on an equal basis in every aspect their lives is fully respected and realised.*"

With this in mind, I will focus on work we have done in the areas of inclusive education, accessibility, community-based living, health

insurance, and employment. The starting point for much of this work has been the concluding observations of the UN's CRPD Committee, as well - of course - as the complaints that have been lodged with our Office. A person complaining to us does not need to be personally affected by the problem. The Ombudsman can also use her own-initiative power to investigate what she sees as shortcomings in the EU institutions. The CRPD Committee's concluding observations have been particularly relevant for us in this area of our work, as they indicate where the shortcomings lie.

I should also mention, as many of you know, that the European Ombudsman is a member of the EU's monitoring framework, just like the *Defenseur des droits* in France, the Ombudsman's Office in Czechia, Finland, Austria, Cyprus, Croatia, Latvia, and Poland, to mention some of the EU Member States where the Ombudsman plays a similar role on disabilities. Our Office is currently chairing this EU Framework that includes the European Parliament, the EU's Fundamental Rights Agency and the European Disability Forum.

In terms of our own work, let me start with employment. The CRPD Committee told the EU, after the first review of compliance with the Convention, that '*the EU should act as a role model and*

increase employment of persons with disabilities across all EU institutions'. On the basis of this statement and after receiving complaints from two visually impaired persons, we opened an inquiry into **the European Personnel Selection Office** ('EPSO'), the EU body responsible for selecting staff to work in the EU institutions. The complaints concerned how **accessible the selection procedures are for visually impaired candidates**. We looked, in particular, at the online form that one has to use to apply to take part in a selection procedure and the computer based tests that form part of these selection procedures.

The complainants said that the online form they have to use, including the form for requesting reasonable accommodation during the tests, is not fully accessible to users of screen readers. They also said that the reasonable accommodation options they selected were not available to them when they sat their tests. The complainants said that the measures put in place by the Selection Office - the responsible body - meant that they could not sit their tests independently.

The Ombudsman found that the Office had not done enough to accommodate the two complainants. She [asked](#) the Office to ensure that its online application form be made fully compliant with accessibility requirements for visually impaired candidates. She also called for assistive technologies for candidates during the computer-based tests, which take place in testing centres around

the world. On this point, the Ombudsman said that *"enabling a person to sit the tests independently is vital to ensuring that person's sense of dignity and equality with all other persons. Assistive technologies are crucial in that respect... It is not appropriate to expect visually impaired persons to sit such tests under conditions that are totally alien to them. Such a practice is bound to give rise to frustration and to exacerbate what is, by its very nature, a relatively stressful experience. It risks impacting upon their performance in selection procedures that are already highly competitive."*

The Selection Office replied to the Ombudsman in March this year. It explained that it is looking into how to replace its current system for applying for selection procedures with a new solution, having in the meantime significantly improved accessibility requirements. Regarding computer-based tests, the Office proposed a solution whereby candidates will sit the tests from home in more suitable conditions since they will be able to use the technology they are already used to and familiar with.

Some of these measures are encouraging; on others, there are question marks over how long they will take.

The next issue to mention is community-based living. Last year, we received a complaint made on behalf of the Validity Foundation. The complaint concerns the European Commission's response to

alleged human rights violations in a home for persons with disabilities co-funded by the EU in Hungary.

The first issue concerned the Commission's delay in replying to the complainant. Given the seriousness of the matter and what this meant for the persons with disabilities in the home in question, the one year it took the Commission to reply was seen by the Ombudsman to be unreasonable. Second, as regards the substance, the Ombudsman noted that the Commission had not adequately addressed the question whether the European Union should fund institutions that, according to the United Nations, should be closed. The Ombudsman referred, in this context, to the UN Committee's *General Comment No. 5*, as well as the Committee's *Concluding observations on the initial report of the European Union and the initial periodic report of Hungary*. The Ombudsman noted that it is hard to see how such funding constitutes good administration. She also pointed out that the EU's Fundamental Rights Agency had recently recommended that the European Structural and Investment Funds should be used to promote community-based living for persons with disabilities, instead of supporting existing institutional structures.

The Commission replied to the Ombudsman recently and we hope to follow up on this case soon.

Another recent area of work for us related to **the EU's Joint Sickness Insurance Scheme (JSIS)**, which is basically the health insurance scheme for EU staff members. Again, the UN Committee raised questions over **whether the treatment of persons with disabilities under this Scheme complies with the CRPD**. We launched an [inquiry](#), in the course of which we [consulted](#) associations of EU staff members with disabilities or whose family members have disabilities, as well as the European Disability Forum.

The basic issue is as follows: the rules governing EU staff provide that medical expenses be fully reimbursed once an illness has been recognised as serious. For an illness to be recognised as "serious", four criteria must be satisfied, including the criterion of shortened life expectancy. The Ombudsman, and others, questioned the criterion of shortened life expectancy. Many disabilities, although they have a very significant impact on a person's well-being, do not necessarily impact negatively on life expectancy - thankfully. However, they still give rise to high expenses in terms of treatment, medication, and equipment, which are essential for the person's full and effective participation in society on an equal basis with others.

The Ombudsman found that the failure of the Commission to take any effective action, in response to the UN Committee's recommendation on the sickness insurance scheme, amounted to

maladministration. She [recommended](#) that the Commission revise the criteria I just set out. She also made a number of suggestions covering assistive devices, reasonable accommodation and staff training in this area.

We were very pleased with the Commission's reply. It stated that it would revise the rules governing the sickness insurance scheme and will take action to follow up on the Ombudsman's suggestions. The Ombudsman [closed](#) her inquiry, asking the Commission to report back within six months. She also reiterated her suggestion on the need for the Commission to review its rules on accommodating the needs of staff with disabilities, which date from 2004, that is before the CRPD.

Another matter we looked into to follow up on the UN Committee's concluding observations was the accessibility of EU institutions' websites. This also followed the adoption of the EU directive on the accessibility of public sector bodies' websites. Although the Directive does not apply to websites and mobile applications of EU institutions, those institutions are encouraged to comply with the Directive's accessibility requirements. It was therefore important for us to see what action the EU institutions are taking.

As most EU institutions look to the European Commission for best practice in this area, the Ombudsman asked the Commission whether it provides information in an accessible way, including easy-to-read formats, and whether it provides an accessibility statement including a way for users to give feedback.

The Commission informed the Ombudsman of the steps it had taken to improve web accessibility. The Ombudsman suggested that the Commission could go further by providing web content in accessible formats that meet higher international standards across a wide range of websites, and introduce mandatory training on web accessibility for all staff members working on websites. The Commission should also proceed with its plan to make some general information available in easy-to-read format. Finally, the Commission should provide 'accessibility statements' on its websites, as well as mechanisms for users to give feedback, in accordance with the Web Accessibility Directive.

The Commission is to reply to the Ombudsman's suggestions in June 2019.

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Finally, in the area of education, the Ombudsman wrote recently to the Commission in relation to the European Schools. The UN Committee expressed its concern that *"not all students with disabilities receive the reasonable accommodation they need to*

enjoy their right to inclusive quality education in European Schools and that the latter do not comply with the non-rejection clause”.

Although the European schools are an inter-governmental body and not an EU body, the Commission sits on the Schools' Management Board and contributes to their financing. The Ombudsman therefore wrote to the Commission about this. She was pleased to note that the Commission's 'Diversity Action Plan 2018-2019' mentions that the overall educational support policy, including intensive support for pupils with special educational needs, was being evaluated and that the results were presented to the Schools' Board of Governors in December 2018. In December, the Ombudsman also [asked](#) the Commission to take the necessary steps to ensure that parents of children with special educational needs who are excluded from European Schools are not required to contribute to the educational costs of their children. The Commissioner for Budget and Human Resources announced in January of this year that the Commission will fully cover these fees and take the lead in changing the relevant guidelines for how other EU institutions deal with this. This is encouraging, although the preferred option is of course inclusion in the European Schools.

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With those few examples of how we have taken the concluding observations of the UN Committee and worked with them, I look forward to the discussion.

Thank you.