

# **RETHINKING DISABILITY AND DISCRIMINATION**

## **A social and economic approach**

*(COMPARATIVE STUDY)*

*“No one who has not been the subject of discrimination can truly know how it feels.”*

*(Colin McKay)*

by

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Budapest, February, 1999

# CONTENTS

## **1 Introduction: the task**

- 1.1 Direct precedents and circumstances
- 1.2 The problem to be examined and the task
- 1.3 Main areas
  - 1.3.1 Macro level
  - 1.3.2 Micro level
- 1.4 Terminology: a critical view

## **2 The concept of discrimination and its degrees**

- 2.1 Prejudice and discrimination
- 2.2 The degrees of discrimination and the ILO definition
- 2.3 The various forms of discrimination
- 2.4 The “measurement” of discrimination

## **3 The international level**

- 3.1 A few of the main international documents
- 3.2. The role of the European Social Charter
- 3.3 Cases at the level of the European Union and the Member States

## **4 National level**

- 4.1 Macro level: governmental-level policies
- 4.2 Micro level (everyday life): cases

## **5 The areas and scope of discrimination**

- 5.1 Organisations
- 5.2 Employment
- 5.3 Accessibility
  - 5.3.1 Accessibility of public transport
  - 5.3.2 Accessibility of the built environment
- 5.4 Institutions
- 5.5 Income, poverty
- 5.6 Education
- 5.7 Polls, prejudices (ATDP-scale) and the role of the media

## **6 Debates issues: the costs and the necessity of new legislation**

- 6.1 The Social and economic costs of non-discrimination
- 6.2 The Social and economic costs of discrimination
- 6.3 The relevance and limits of law: Pros and cons

## **8 Conclusions**

## BIBLIOGRAPHY

## **Appendix 1: Some examples of discrimination**

- Cases at the EU-level
- Cases in Member States

## **Appendix 2: The 25 questions**

# RETHINKING DISABILITY AND DISCRIMINATION<sup>1</sup>

## A social and economic approach

(Comparative study)

### 1 INTRODUCTION: THE TASK

*“The ideas and concepts of equality and full participation for persons with disabilities have been developed very far on paper, but not in reality. In all our countries, in all types of living conditions, the consequences of disability interfere in the lives of disabled persons to a degree, which is not all acceptable. Many of the existing obstacles and limitations occur in areas of fundamental importance to our situation as citizens of our societies. If a person in a wheelchair wants to attend a public meeting, be it social, cultural or political, and if he cannot get into the meeting room because the building is not accessible, his rights as a citizen have been violated. A blind person interested in a public debate who has no access to the daily paper in which the discussion takes place is in a similar situation. When a person is excluded from employment because of the fact that he is disabled, he is being discriminated against as a human being. If a general education system is developed in a developing country and disabled children are excluded, their rights are being violated.”*

(Bengt Lindquist)

#### 1.1 Direct precedents and circumstances

The Council of Europe Committee on the Rehabilitation and Integration of People with Disabilities; *Working Group on Legislation Against Discrimination of Persons with Disabilities (P-RR-LADI)* examines the need for non-discriminative (or, in other words, anti-discrimination) legislation to be adopted in the interest of persons with disabilities at the level of the *Member States*<sup>2</sup> and at the European level. In keeping with its decision, it became necessary to make a thorough examination of the regulations concerning persons with disability currently in force in the Member States.

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<sup>1</sup> I had the chance to meet *Mr. B. Wehrens*, the highest authority of the EU on disability. It happened in Budapest, in the Ministry of Welfare in 1993 or 1994. It was not long after we had finished formulating the *Standard Rules* in Vienna. I mentioned to him that I had just compiled the four existing Hungarian proposals for a new equalising opportunity and anti-discrimination law for people with disabilities into four columns and it was to be discussed in Hungary by quite a lot of organisations and professionals. I told him that my version stands on the basis of such principles as non-discrimination and equal opportunities. He told me that the first is *rehabilitation*, so what I said was not important at all. I was very disheartened. A few years later the Council of Europe began to deal with the problem. I was able to occupy a place among the observers in mid-1997, behind the *Hungary* sign. The sign at the adjacent observer position read: “*Mr. B. Wehrens; European Union*”.

<sup>2</sup> The term “Member States” in this paper does not mean Member States of Council of Europe in general. Instead, it means only countries that have ratified the Partial Agreement of the Council of Europe in the Social and Public Health Field. These are Austria, Belgium, Denmark, France, Germany, Ireland, the Netherlands, Norway, Portugal, Spain, Sweden, and the United Kingdom. The observer states are Estonia, Hungary, Poland and the European Union.

This was the task of the other consultant, Professor *Heinz-Dietrich Steinmeyer*. In addition, it also appeared necessary to examine the *practical situation* of disabled persons, principally from the sociological angle; this task was allotted to me.

The task had to be carried out in three parts. In the first approach (see: Kőnczei 1997) I attempted to define certain basic principles, historical elements and values. In the second approach (see: Kőnczei 1998) I attempted to make a concrete study of the problem itself. I drew up a questionnaire covering the main gaps in our knowledge. It contained 25 questions on a total of 10 issues and was sent to the Governments of the Member States (see Appendix 2). However, at the last, fourth session of the working group held in May it became clear that it is not possible to answer these 25 questions from government level within a relatively short time. The two exceptions are important: *France* and *Poland*. Although the basic findings of these two extra documents are embedded into this draft, there are no systematically given answers to the questions of the questionnaire. It throws difficulties in the way of comparison.

Since it was not possible to launch and conduct new, original research, as this would have required at least one or two years of extensive empirical investigations, it became necessary, in addition to the official reports sent by the Member States, to draw on further professional documents, publications and published information from non-governmental bodies. Furthermore: reports of the Member State make almost no reference to the existence of discrimination or discriminatory cases. Consequently, this study follows a certain *documentary style*: a lot of references and footnotes. According to a well-known fact, many people, professionals argue that discrimination based upon disability does exist. This is surprising, because if someone finds *any* relevant publication almost from any Member States, written on our topic, it refers to the existence of discrimination against people with disabilities.<sup>3</sup> (Of course, all sources used – governmental, non-governmental and scientific – are given in detail in the bibliography.)

## 1.2 *The problem to be examined and the task*

*“Discrimination against disabled persons is an evident and obvious fact of their everyday life throughout the world.”*<sup>4</sup> This hypothesis is widely used by persons living

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<sup>3</sup> See e.g. Barnes 1994, Contributions 1994, Despouy 1993, Heiden 1996, Lunt–Thornton 1994, National 1997, Waddington 1997.

<sup>4</sup> To cite a few examples of practical incidences:

– The Dutchman, *Aart Hendriks* mentions: “...in the Netherlands it is evident that people with a disability are confronted with discrimination in all areas of society due to their disability”. (National High Council 1997, p. 52.)

– Dr. *Teresia Degener* writes: “One of the most frequent human rights violation against disabled persons is the experience of disability based discrimination in all fields of everyday life.” (Invisible 1995, p. 7.)

– *Lisa Waddington* states: “The Commission has however decided to introduce further non-binding instruments, including a communication on the measures to be taken to remove discriminatory barriers still facing disabled people and a recommendation concerning the practical implementation of the United Nations Standard Rules.” (Invisible 1995, p.12.)

with disability, their representatives and organisations, as well as in the phraseology of the independent living movement throughout Europe and even the world. It was principally under the influence of the disabled persons' movement and the lobby of people with disabilities that the question of and need for non-discriminative legislation was raised.

The aim of the present paper is principally to *launch* the process of refutation – verification of the above statement, above all in respect of the Member States of the Council of Europe. Firstly through a comparison of the economic and social facts to be found in the national reports drawn up and made available by the Governments of the individual Member States<sup>5</sup>, as well as in further published sources and statistics, and secondly to clarify concepts and principles in the interest of adoption of a future position by the Committee.

It is only possible to *launch* such an investigation since, as far as we know, such a professionally sound analysis meeting scientific requirements has been made in only a few of the Member States, largely only in cases where anti-discrimination legislation has been introduced. For this reason, it must be anticipated that many data and facts of fundamental importance are lacking.

It is not the task here to determine whether *there is a need* for the creation of legislation banning (negative) discrimination to be adopted in the interest of disabled persons at the level of individual Member States or at the all-European level. (In this respect I adopted a different position when I drew up the first draft – see: Köncezi 1997.)

Above all, it must be taken into account that the constitution – or legislation of equivalent level – of all European countries bans discrimination. The majority of these also refer to the importance of creating equality. Despite this, at least one European example can be cited of the toleration of discrimination – on a racial basis – in the course of application of the law. And the most important areas of application of the law are mainly in the *economic and social* sphere.

### 1.3 Main areas

#### 1.3.1 Macro level:

It is important to point out the focal points of the different national disability policies.

i) Are the national disability policies based on the *welfare approach*? If so, this could also be called a *social policy approach*. According to the findings of this report,

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– *Potter*: "There were 115,000 discrimination cases filed at the federal and state level last year" (Griffin 1991, p. 1000)

– "Non-discrimination is an important concept." Manifesto 1997, p. 2

<sup>5</sup> The *primary* sources for the national reports are the P-RR-LADI documents listed in the bibliography. The *secondary sources* are the publications prepared, mainly within the frame of the United Nations, on the basis of various country reports originating from governments (e.g. Despouy 1993, Michailakis 1997A.)

this is the dominant one in Member States (e.g. Austria, Belgium, Germany, France, Nordic countries). This approach can be characterised basically by high level financial benefits for people with disabilities and strong *reverse discriminatory* measures.

ii) Or do the national disability policies focus rather on measures adopted in the interest of *avoiding discrimination*? If so – or if such a focus can be found in the practice of a particular country – then this approach could be called a *human rights approach*. This approach can be characterised basically by the existence of high level legal regulations – acts, laws – banning (negative) discrimination. A clear human rights approach is not typical on the Continent. (It can be found rather in Australia and in the United States. The emerging line of development shows a slight shift away from the basic attitude in the countries with a Continental law, mainly under the influence of the Anglo-Saxon countries belonging to the *common law* type.)

iii) There is also a possibility of a combination of the above mentioned two approaches where both the first and second considerations are taken into account. It might be called a *combined approach*. This approach can be characterised basically by the co-existence of the two approaches. The best example for this is possibly the Netherlands. The country also has a scientifically well-based, long term programme of a very high standard (Beyond 1997) .

“General where possible, specific where necessary” is the idea used by everyday macro-level policy in several countries, first of all in the Netherlands, but also in Finland, and other Scandinavian countries.

### 1.3.2 Micro level:

The discrimination found in personal, everyday life and situations of this type represents the micro level. The task in this connection is to determine whether discrimination against them is typically found in the everyday life of persons living with disability or not. The examples given in Appendix 1 in particular refer to this.

## 1.4 Terminology: a critical view

### *The WHO terminology*

It would be difficult to find another field where such radical changes have imposed themselves in recent decades as in the field of disability. In the first place the concept of *sick role* (T. Parsons 1950) has given way to *disabled role*, while the approach has shifted from the *individual model towards the social model*. At least within the ranks of the disabled movement and in sections of public thinking. This is not the case in legislation.

The concept of *disability* is not used in this paper according to the definition adopted by the World Health Organisation (WHO)<sup>6</sup>. Why not? Let us examine the problem first. The WHO definition is as follows:

*“Impairment: Any loss or abnormality of psychological, physiological, or anatomical structure or function.*

*Disability: Any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.*

*Handicap: A disadvantage for a given individual, resulting from an impairment or disability, that limits or prevents the fulfilment of a role that is normal, depending on age, sex, social and cultural factors, for that individual.” WHO 1980.*

It must be pointed out that this definition played a particularly important and progressive role for many years. This was the case in a number of disciplines since it provided an acceptable and practical conceptual frame for thinking on disability affairs. However, developments in the close to twenty years since it was formulated warn us of the need for caution. Consider, first of all, the *par excellence* medical character of the definition. This is the first aspect that has been superseded. But seen from the viewpoint of sociology and social psychology, the WHO interpretation of the concept is also strikingly *individual* in character.

It gives the impression that impairment as a whole is solely a *private matter*, even though statistics show that impairment originates to a considerable extent as a consequence of industrial accidents and road accidents and for this reason cannot be regarded in isolation from other relevant social facts.

In essence this same cardinal relationship is found in the case of the concept of *disability*. But in reality what does it mean? Restriction, for example, of walking, speech, hearing or mental functions. Are these really individual problems? Is there any disabled person who does not live in society, in a community, in a family? These functions – walking, speech, hearing, mental functions – have no meaning *in*

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*Disability: Any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.*

*Handicap: A disadvantage for a given individual, resulting from an impairment or disability, that limits or prevents the fulfillment of a role that is normal, depending on age, sex, social and cultural factors, for that individual.” WHO 1980.*

*themselves*. If a person walks, he/she *goes to someone*, if a person speaks, he/she *speaks to someone* and so on. If we take this into account it becomes perfectly clear that it is not solely individual problems and private matters that are concerned here, but small and large communities, families, society.

However, all this appears most dramatically and most closely associated with the problem of discrimination in the case of the concept of *handicap*<sup>7</sup>. According to the WHO definition this means the inability of the individual to fulfil a normal social role. As though it were the *individual problem* of the handicapped person that he/she is unable to go out to work, is unable to go out for entertainment, cannot form friendships *because the environment and transport are not free of obstacles or because certain basic aids are not available*. This is not the case at all. If the persons concerned are not covered by insurance, very serious discrimination on the part of society is involved.

Summing up, it can be said that the WHO definition can be put to good use in the future too in medical and health terminology, but elsewhere, especially in sociological studies and in legal analyses dealing with discrimination, it is no longer tenable.<sup>8</sup>

#### *Discrimination and social exclusion (conceptual distinction)*

Modern society has to face two particularly painful problems. One is *poverty* and the other is *discrimination* itself. (However, poverty is in reality one form of – negative – discrimination or social exclusion.) Consequently, *discrimination* might be interpreted *as the most serious problem of modern society*.

Let us first of all make a distinction between the concepts of *discrimination* and *discriminating*. The latter assumes definite, intentional activity. However, discrimination may refer solely to the result: to the process of negative discrimination or to its established situation. (Theories on discrimination in the literature separate on this point into *process-based theories* referring to the *process* of negative discrimination, and *result-based theories* referring to the *result* of the negative discrimination. See: Koppelman 1996.)

If the concept of discrimination is interpreted sufficiently widely to include also *social exclusion*, it becomes clear that the two are essentially the same thing. It is obvious, above all, that both can *only be of a social nature*. Moreover, what else are severe poverty, homelessness, stigmatisation, or rejection, ostracism, ghettoisation, than precisely these? For *in the final analysis* what else is poverty, homelessness, ostracism,

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<sup>7</sup> The literature points out that in English the concept of *handicap* is or can be associated with “*cap in hand*”, that is, with begging (Barnes 1994, p. 2).

<sup>8</sup> N.B.: In the course of debates conducted earlier in the Committee it became clear – in connection with certain of my efforts to create concepts – that the Committee does not regard it as the task of the consultant to create and define concepts. Consequently, I could not disregard this principle here either: I had to content myself with pointing out the unsolved nature of the problem. If this has not been observed elsewhere in the present study, exceptions have been made solely in crucial cases.

stigmatisation than discrimination, what else is exclusion from society in different respects than *the application of a different yardstick* (or ordering or condoning such an application) to a particular person or group?

However, discrimination is present above all *in prejudiced and stigmatising speech, in written texts, in ill-conceived jokes, gestures, conspiratorial winks, bad approaches, in keeping an unnecessary, unjustified distance, in segregation, mocking and even humiliation* in every day life. (To humiliate is also to discriminate. It is not possible to humiliate *everyone*.) This is the origin, the precondition for discrimination.

#### *Further details*

Earlier, the first draft used the concept of “anti-discrimination”. But because of its clearly negative connotation, the term appears to imply the answer to the basic question raised in the present paper. It therefore appeared advisable to change the term used earlier and, as far as possible, to use instead the concept of *elimination of discrimination*, or of *equal treatment*.

Taking into account the conceptual debates conducted earlier in the Committee, it also appeared advisable, wherever possible, to replace use of the concept of *positive discrimination* with that of *reverse discrimination or affirmative action aimed at compensating for disadvantages*.

## 2 THE CONCEPT OF DISCRIMINATION AND ITS DEGREES

*“If we can convince ourselves that a group is unworthy, subhuman, stupid or immoral, it helps us to keep from feeling immoral if we enslave members of that group, deprive them of a decent education or murder them. We can then continue to go to church and to feel like good Christians, because it isn't a fellow human that we have hurt.”*

*(Elliot Aronson<sup>9</sup>)*

### 2.1 Prejudice and discrimination

The cultural construct of disabilities varies from one culture to another, but on this point European culture itself – since its Jewish-Christian emergence – has been rather homogeneous.

Prejudice is not only the assumption of bad things about others without sufficient grounds since there are also prejudices of a positive emotional nature. (Ethnic-based prejudice most frequently has a negative emotional charge.) There is a difference between prejudice based on a simple mistake and real prejudice because newly discovered facts are incapable of changing the latter. As a result, real prejudice against disabled persons “may remain at the level of emotions, but may also be expressed in behaviour. It may be directed against the whole of a particular group or at a single individual on the grounds that the person is a member of the group concerned”. (Allport 1954, p. 40 – retranslated from the Hungarian edition).

It can be seen that prejudice does not always become action, but hidden or suppressed prejudice is still prejudice. *Discrimination is one of the striking manifestations of deep-seated prejudice against disabled persons.*

Both everyday life and history provide examples of the *degrees* of prejudiced behaviour towards disabled persons:

1. *oral prejudice*: oral form expressed mainly among acquaintances, relatively mild degree.
2. in the case of *avoidance*, contact with the persons concerned is avoided even if this causes inconvenience for the prejudiced person.
3. *disadvantageous discrimination*: in the case of the active, serious form, individuals subjected to prejudice are excluded from employment, settlement and the exercise of political rights.
4. *use of physical violence* (pogroms).
5. *annihilation*.

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<sup>9</sup> Aronson 1980, p. 207 (*Causes of prejudice*)

Discrimination never exists in itself. Its appearance is always linked to the violation of some other, constitutional or other, basic human right. The problem of this paper *in the sociological sense*, discrimination means that *persons – or a group of people – in an identical position are treated differently (less favourably) than others on the basis of their disability without any objective cause to justify* such different treatment (direct discrimination). Or, put otherwise: *discrimination means that persons in a different position are treated identically* (indirect discrimination). Special mention must be made of indirect discrimination because persons living with disability cannot, or cannot always be treated in the same way in practical situations as the so-called “*sound people in body and mind*”<sup>10</sup>. For instance indirect discrimination might occur if something – e.g. job – is available subject to certain conditions which make it more difficult for people with disabilities to reach or qualify than for non-disabled ones.<sup>11</sup>

The Dutch report, in its Appendix I, gives another possible definition of discrimination: “*Disadvantaging individuals or group of people on the basis of features that do not constitute an acceptable reason in the context of the treatment.*”

## 2.2 The degrees of discrimination and the ILO definition

There is a borderline between direct and indirect discrimination. Direct discrimination is hard and above all involves segregation and exclusion. According to the evidence of the national reports, direct social and economic discrimination cannot be regarded as an everyday practice in the Member States. However, at the same time *discriminative cases exist*. Their frequency and severity are important, on the one hand, for the *measurement of discrimination* (see later) and on the other seem to indicate the need for non-discriminative legislation.

*Convention No. 111, 1960 of the International Labour Organisation (ILO)* classifies discrimination in respect of occupation and employment:

“1 ... the term 'discrimination' includes –

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other discrimination, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with

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<sup>10</sup> The conception of *indirect discrimination* is referred to in the jurisprudence of the *European Court of Justice* in the case of discrimination against women. The view might be used for the case of disabled persons also, *mutatis mutandis*. “The Court has recognised that whilst discrimination based on prejudice against women is a central problem which the law must tackle, equal opportunities law should reach well beyond that and should tackle structural or institutional forms of discrimination not necessarily based on prejudice. This can be seen in two legal developments of particular significance: the development of the concepts of ‘indirect discrimination’ and ‘equal pay for equal value’” (McCrudden 1998 p. 5).

<sup>11</sup> The Dutch report, in its Appendix I, gives another possible definition of discrimination: “*Disadvantaging individuals or group of people on the basis of features that do not constitute an acceptable reason in the context of the treatment.*”

representative employers' and workers' organisations, where such exist, and with other appropriate bodies...

2 Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.”

### 2.3 *The various forms of discrimination*

Three further forms of discrimination are known:

1. *Malicious disadvantageous discrimination*. The first is malicious, that is, open and intentional discrimination. The case of the French restaurant in Bordeaux is an example of this. (See Appendix 1.)

2. *Unequal treatment*. The second is when a person or group of persons are treated differently from the others, either intentionally or accidentally. (This is a complicated thing because discrimination against disabled persons is often inspired by a kind of paternalist good intention, concern, pity or protectiveness.)

3. *Indirect discrimination*: The third form is indirect discrimination. In this case, for example, a policy or practice which is quite clearly neutral has a detrimental effect on the discriminated group. The case of discrimination motivated by social policy could be cited: “they have income from another source, they do not need to enter paid employment”.

Another type, *wage discrimination* is close to the second of the above three types. According to numerous publications (e.g. ILO 1996), employers often tend to the view that disabled employees are capable *ab ovo* of only a smaller performance than that of so-called “*sound* persons”. On the basis of this seemingly rational justification they pay them lower wages than those received by other non-disabled employees having identical qualifications, age and position. Since it is difficult to prove this correlation statistically, only a few empirical data can be cited. Among the country reports, only that of Hungary referred to a labour law case of this nature before the courts.

### 2.4 *The “measurement” of discrimination*

If there are discriminatory cases at all, it means that discrimination against people with disabilities is an existing phenomenon. Some cases, not necessarily legal, or court ones, but discriminatory cases from the everyday life of disabled persons are collected in Appendix 1. However, those are examples merely. If all cases, or significantly more cases were known, the *intensity of discrimination* could be measured.

The problem raised in the subtitle contains an important methodological connotation. First of all, no Member States reported on discriminatory cases. These have never been collected, analysed in the past. There is no literature available on the *measurement of discrimination*. This applies not only to the population living with disability but also to the situation of various other minority groups.

Secondly, since the *size of the discriminated population* is important in cases where discrimination exists, it would be essential to know exactly what proportion of the population of a given country consists of persons living with disability. It does not mean that the disabled part of the society is discriminated entirely *per se*. No. It means that if discrimination exists, than it seems to be important to know what proportion of the society might be touched upon.

This proportion is largely the same throughout the world: at a rather *rough estimate* the European Commission and the WHO put it at 10 %<sup>12</sup>. Nevertheless, significant differences can be found between the different Member States of the Council of Europe as a consequence of their economic situation, the differing regulations, the statistical systems and different methods used to judge disability.

Thus, in Ireland and in the Netherlands for example, the proportion of the population living with disability corresponds precisely to the published rough estimate of the UN World Health Organisation (WHO)<sup>13</sup> for the world as a whole. However, the rate is a bit higher in Belgium (12 %), Denmark (12.2 %), France 12,4 % and significantly higher in the United Kingdom (15 %) and in Poland (14,3 %), while in other countries – such as France\*, Hungary – this figure is around 5 %. The cause of the differing proportion country by country comes from the differing methods of assessing disability. Persons are declared disabled if they can produce evidence of at least 50 % disablement in Austria, 67 % of disablement in Hungary. In the German practice people qualified being *severely disabled persons* if the level of disability in their case exceeds 50 %.

Moreover, in the majority of countries there is no uniform, super-definition of disability embracing the whole of the legislative system, instead different groups of disabled persons fall under the competence of the various acts (Special Education Act, Social Insurance Act, Labour Act, etc.), e.g. disabled children, victims of occupational accidents. Striking examples of this phenomenon are Belgium, Canada, Finland, the Netherlands and up to 1998, Hungary.

A tendency to use broader concepts can be observed in the practice of some countries, e.g. Finland, Netherlands. This seems better able to create the possibility for participation on an equal basis in all segments of social life, including rehabilitation, rest and recreation.

The process of socialisation of persons living with disability fundamentally differs in many respects from that of so-called “*sound persons*”. In contrast with the medical approach that had earlier strongly dominated the judgement of disability, a process of clarification began throughout the world approximately twenty-thirty years ago. As a result, the old attitude has given way to a sociological approach, leading to a perceivable, measurable reduction in the individual countries in the intensity of

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<sup>12</sup> See: European Commission 1996, p. 30 and WHO 1980.

<sup>13</sup> WHO 1980.

labelling, stigmatisation and the prejudices against persons living with disability.<sup>14</sup> Although only the Canadian country report makes concrete reference to this fact, the course of the process and its consequences are well known in the Member States too.

Another important driving force of this *process of demedicalisation* is the struggle that disabled persons have been waging for decades for their own rights, partly within the frame of the independent living movement.

### 2.5 The concept of “disabilitism”

Based on the analogue of *racism* and *sexism* etc. it seems to be obvious to define a new term of *disabilitism*. It means basically the phenomenon of direct or indirect discrimination that comes from the everyday practice of prejudice, stigmatised social status of people with disabilities and might lead to segregation in practice. “Disabilitism” can be used as a covering term of certain phenomena discussed in this paper. (The introduction of it does not refer to systematic discriminatory practice of full economic sectors, firms, nor governmental policies. Of course, not. These *do not exist in Europe.*)

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<sup>14</sup> The linguistic development occurring in the different Member States is also a sign that the stigmatisation is easing. The use of discriminating, humiliating terms which, in the final analysis, refer to the *non-human or not entirely human nature* of persons living with disability is gradually being dropped from the different languages. Such terms include *cripple*, *invalid* or *minusvalidos*, *invalidos*, *incapacitados*, *retrasados*, etc. They are being replaced by *politically more correct* terms, e.g.: *people with disabilities*, or *personas con discapacidad*. This is the result of the world-wide *cult of political correctness*.

### 3 INTERNATIONAL LEVEL

*“The terms discrimination and disabled persons are beginning to be seen as related and new concept referred to as social exclusion is gaining ground.”*

(Spanish report)

The various documents referring to the ban on discrimination against disabled persons, particularly those drawn up and adopted by the United Nations Organisation (UN) are cited precisely and analysed by Despouy 1993, pp. 4-14. It is sufficient to make only a few very brief references here.

#### *3.1 A few of the main international documents*

a) In paragraph 22 of its Vienna Declaration and Program of Action the World Conference on Human Rights, held at Vienna in 1994, stated that

“Special attention needs to be paid to ensuring non-discrimination, and the equal enjoyment of all human rights and fundamental freedoms by disabled persons, including their active participation in all aspects of society”.

b) The International Covenant on Civil and Political Rights refers generally to human rights: article 2, paragraph 3, articles 16, 17, 23, 25 and 26.

c) The UN Declaration on the Rights of Disabled Persons, adopted by the General Assembly on 9 December 1975.

d) The UN Declaration on the Rights of Mentally Retarded Persons, adopted on 20 December 1971.

e) It is important to note that the currently valid text of the Treaty of Rome contains no specific reference to disabled persons, nor do other documents of mandatory force of the European Union. There are two exceptions: the *Community Charter of the Fundamental Social Rights of Workers* which has been recently adopted by not only 11 EU Member States, but also by the United Kingdom so it is of mandatory force, and the *Resolution of the European Union (December 1996) Regarding Equal Opportunities for the Handicapped*. However, these do not contain a ban on discrimination either. But the European Union took a very reasonable step forward in the *Treaty of Amsterdam*, article 6A.

f) Undoubtedly, the most significant document of all is the United Nations *Standard Rules on the Equalisation of Opportunities for People with Disabilities* adopted by the General Assembly in 1993. The evaluation of the document brings forward very reasonable new developments in Europe (Michailakis 1997A, 1997B).

#### *3.2. The role of the European Social Charter*

The most fundamental collection of guaranteed social rights of the world is the European Social Charter, the international agreement of the Council of Europe (1961). Article 15 of this Charter refers to the right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement. The text of the Charter reflects the shift from traditional assistance policies towards reintegration into the society.

The world has changed a lot since the end of the fifties when the Charter was formulated (the emergence of the independent living movement etc.), compared to the first half of the nineties. As a consequence, the regulations of the Revised European Social Charter go further. It refers to the obligation of full social integration and participation of people with disabilities. And also to overcoming barriers to communication, mobility and enabling access to transportation, housing, cultural activities and leisure. Although this process is of great importance, as yet the only Member State to have ratified its provisions is Sweden. So it has not come into force. The “New Charter” shows the way for the new millennium.

The European Social Charter has its own case law, concerning Article 15. In its first supervision cycle – in the old times – the most significant case-law-creating body of the Charter, the Committee of Independent Experts (its new name is: *European Committee on Social Rights*) stated that the most overriding purpose is that such persons shall be enabled to be *independent* (Conclusions, I. p. 72).

Another important statement of the Committee of Independent Experts was that the quota system is not a prerequisite for compliance with the provisions of Article 15, paragraph 2 – case of Sweden, Conclusions I, p. 73. This is an important statement since the relevance of quota regulations is increasingly questioned by the disability literature.

From the point of view of this study, the most meaningful element of the case law of the Charter is that by the end of the XIII. supervision cycle there was no country not in conformity with the requirements of the European Social Charter.<sup>15</sup> In its XIV. supervision cycle the Committee of Independent Experts concluded negatively only in the case of one Member State (Conclusions XIV-2, p. 155).

### *3.3 Cases at the level of the European Union and the Member States*

Some concrete cases are set out in Appendix 1.

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<sup>15</sup> The only country found not in conformity with the requirements of Article 15 of the Charter was Italy. (Italy is a member state of Council of Europe and did ratify the Charter).

## 4 NATIONAL LEVEL

“A society which is good for disabled people is a better society for all.”  
(Lisa Kauppinen)

### 4.1 Macro level: governmental-level policies

Policies elaborated to equalise opportunities for persons living with disabilities are widely applied in most all Member States. Positive action plans are published and updated, reanalysed regularly. Most remarkable examples are Belgium, Finland, Germany, Ireland, the Netherlands, Norway, Portugal and Sweden. Important example among observer countries is Estonia and Poland.

According to the Dutch report, three types of disability affairs policies can be distinguished at macro level. The three types of measures are as follows:

*Categorical policy* (separate regulation and budget allocation in respect to the particular target group: people with disabilities). This can be found as a practice in Canada, Ireland, Hungary, Poland. A version of categorical policy is if a special Minister is responsible for disability issues (e.g. Luxembourg; the same position used to be held by a disabled person in France).

*Inclusive policy* (specific measures and budgets for the particular target group are contained within the framework of general measures for every citizen). Basically, every country uses all three types of measures, however, the *inclusive policy* seems to be most dominant in the Scandinavian countries, Finland and in the Netherlands.

*Facet policy* (in this case special attention is paid to the specific problems of people with disabilities: projects, experiments, research): practically every reporting country.

There is only one country – Poland – where the institution of the so called *Plenipotentiary*, empowered with a wide jurisdiction, has been introduced.

### 4.2 Micro level (everyday life): cases

The reports submitted by Member States contain very few references to concrete cases. The sources of these – Appendix 1 – were in other published materials (see Bibliography).

## 5 THE AREAS AND SCOPE OF DISCRIMINATION

### 5.1 Organisations

Freedom of association for people with disabilities is guaranteed not only by law, but also by political and social practice in all reporting Member States. This is significant as in the case disabled people creating an association is a reasonable territory of full and active participation.

A National Committee of Disabled Persons or National High Council for People with Disabilities has been established in *every country*, by the Government on the basis of a Royal Decree<sup>16</sup> (e.g. Belgium: 9 July 1981), by law (Hungary 1998 or Finland 1985), and by other legislative measures (Ireland 1993). The same sort of high level committee exists in Spain (Spanish Committee of Representatives of the Handicapped), in Estonia (Estonian Council of Disabled persons) and in Canada. Of course, there are far more local organisations, NGO-s can be found on national level, for instance more than 80 in Norway and at least 40 in Hungary. The highest number of it was reported by Poland: about 5600 non-governmental organisations acting for disability issues were registered in 1997.

These committees or councils have equal representation of people with disabilities and government authorities in general. They have a leading role in creating disability policies through a multisectoral and multidisciplinary strategy on the national level. These councils or committees are autonomous bodies, using their own professional advisory capabilities in relation to policy-makers and ministries on all issues concerning any disability matters, including the well-being of people with disabilities and equalisation of opportunities. It is the duty of the Councils or Committees to establish the estimated costs of all recommendations made by them.

### 5.2 Employment

Member States apply a wide range of vocational measures, several different solutions in order to employ people with disabilities. These are vocational guidance, training, job placement, “job coaching”, training centres, sheltered employment, on the job training, selective placement, enclave, supported employment, supported self employment etc.

The great majority of the countries have ratified the International Labour Conference Convention No. 159 on the “Vocational Rehabilitation and Employment of the Disabled”. (These Member States are Hungary, Norway, Sweden – 1984, Denmark, Finland, Switzerland – 1985, Ireland – 1986, the Netherlands – 1988, Germany –

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<sup>16</sup> The term used by the last but one version was: *Royal Decree*. It has been criticised by the Belgian delegation, saying: “le terme exact est ‘arrêté royal’ (au lieu de ‘décret royal’)”. The term *Royal Decree* is used by the Conclusions of the Committee of Independent Experts in the same meaning. (Conclusions XIV).

1989, Iceland, Spain – 1990). Only a very few of them received requests regarding certain points from the International Labour Organisation based on the report of the Committee of Experts.

The fourth report from the Commission to the Council, the European Parliament and the Economic and Social Committee on the application of the Community Charter of the Fundamental Social Rights of Workers (European Commission 1996) discusses the case of 12 Member States from the viewpoint of the practical situation of disabled persons.

The quota-levy system is implemented in the great majority of the countries, but not everywhere. There are exceptions, for instance Denmark and Norway. The quota-levy system differs from country to country, for instance: France, Poland: 6 %, Hungary and Luxembourg: 5 %. The quota is 2 % in Spain in private companies hiring more than 50 employees, but it is 3 % of public sector vacancies (up to 2 % of jobs held by disabled individuals). In Poland the levies are paid to the State Rehabilitation Fund.

The effective operation of quota or quota-levy systems is often under criticism. The German system of vocational rehabilitation and its legal background might be one of the most highly organised in the Europe, but it also seems to be limited.<sup>17</sup>

Several systems creating options of sheltered employment have been introduced in Luxembourg, Spain, Poland and also in other countries every Member States (see: Council of Europe: Coherent Policy VII.3.4. – to be completed in the final version). There has been a shift from sheltered employment to supported employment in such countries as Australia, Canada, USA since the 80s. The question is widely discussed in Europe too.

There are special employment centres where a great majority of the staff are persons living with a disability, e.g. in the Netherlands, Spain, Hungary.

In respect of the concrete cases, it should be mentioned that some sort of discrimination exists on the labour market (according to the Hungarian report and Appendix I of the Dutch report). The labour market participation rate of the disabled population is half that of the non-disabled population (Spain), due partly to the prejudiced management of companies (Spain). But they are significantly underrepresented in the labour force in such countries as Canada – having a relatively low unemployment rate (8 %). This is also true in the case of Norway, where the average unemployment rate is between 2-4 %, but disabled people are also underrepresented in the labour force. The unemployment rate of people with

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<sup>17</sup> “The empirical analysis shows that a part of the enterprises have employed people with disability, before it became a legal obligation; but in the same time most of the enterprises try to bypass, at least partly, the obligation of employment and the laws giving special protection to disabled workers. In both cases the provisions made by *Schwerbehindertengesetz* (Disabled Persons' Act) have not proved to be sufficient.” (Contributions 1994, p. 38).

disabilities is also high in the Netherlands: only about 20 % of them are hired.<sup>18</sup> Poland seem to be an exception with its 11,1 % unemployment rate of the general population, that is almost the same in the case of the disabled one (11,7 %).

Not reported, but published facts might be quoted from the literature: “Disabled people have consistently experienced higher rates of unemployment than the rest of the adult population. This is not because they are unable to work. It is due to the discriminatory behaviour of employers, who have failed even to try to meet their legal obligations under the quota system and to the lack of political will to insist upon enforcing the law” (Bynoe 1990, p.13).

According to ILO data (cited in: Despouy 1993, p. 26), the unemployment found among disabled persons is two to three times that of the non-disabled all over the world<sup>19</sup>. According to EC Labour Force Survey the rate chance of a disabled person to become unemployed is almost 4 times higher than the same rate in the case of the non-disabled ones (Barnes 1994, p. 63).

Surprisingly, rapporteur of United Nations Mr. Despouy could only certify this statement with data from the end of the 70-ies. The reason for the fact that people with disabilities find it much harder to secure their employment than the non-disabled ones comes from labelling, prejudice and discrimination.

However, it is well known by many employers that from several points of view it makes good economic sense to hire them (see e.g.: Conley 1965, p. 128; Köncezi 1994, pp. 89-92; Waddington 1995), basically because of their higher standards of presence, efficiency of labour, lower absenteeism, fewer accidents at work, etc., according to the experiences of such companies as *DuPont, IBM, Marks and Spencer's, McDonald's, Shell*.

*Unemployment rates of the active population living with disability in some countries according to some ILO data<sup>20</sup> – to be completed in the final version*

Country	Unemployment rate for the whole population ( % )		Unemployment rate for the population living with disability ( % )	
	1978 <sup>21</sup>		1978	
Denmark	7		11.5	

<sup>18</sup> Contributions 1994, p. 52.

<sup>19</sup> There are no exact data from Germany either, however, it was stated in a study that: “no significant reduction of the unemployment rate of persons with disability has been noted since the new amendment of the Disabled Persons’ Act in 1986” (Contributions 1994, p. 39) Furthermore: “...the labour market situation is still extremely difficult for people with disabilities...” (FIMITIC 1998, p. 1).

<sup>20</sup> The table to be completed in the final version.

<sup>21</sup> Source for the 1978 data: Despouy 1993, p. 26

France	Appr. 5		Appr. 15	
Germany				
The Netherlands	7		17.5	
United Kingdom	5.5		14	

One type of management prejudice is that physical disability necessarily goes together with mental disability. Because of this many physically disabled persons are not given work (Despouy 1993, p. 25). But this is only one of the causes of the underrepresentation of disabled persons on the labour market. Another substantial cause is the *lack of accessibility of workplaces*.

An important circle of employees: *self-employed disabled workers* is reported only by Luxembourg and Poland, from the point of view of their special needs. In the Polish system there are grants for disabled self-employed workers to start their own private enterprises.

There are reported discriminatory cases – first of all in respect of persons living with visible disabilities – but only in the report of Canada and Hungary. The new act on health insurance (introduced in 1996) might also lead to discrimination of impaired and disabled employees in the Netherlands in the future.

However, there are very few examples of an increasing rate of the representation of people with disabilities in the labour market too (Canada: the federally regulated employment sector, from 1.6 % to 2.7 %).

The White Paper on European Social policy (1994) reflects also on the topic of discrimination. “The Commission proposed to draw up a code of good practice for employers and to introduce measures to eliminate discrimination against disabled people. Disabled and older people were identified as categories not to be excluded from the benefits of a more integrated Europe because they were capable of making an active contribution.” (Hantrais 1995, p. 129).

### 5.3 Accessibility

One of the most critical problems is accessibility. It Accessibility has at least two major aspects: access to the physical environment – e.g. buildings, transport – and access to communication and information. Lack of accessibility might cause unequal burdens. It belongs to indirect discrimination. As it is “the failure to create reasonable measures in order to remove a handicap imposed by an individual’s social or physical environment”,<sup>22</sup> that may prevent people with disabilities from exercising their political, cultural, economic and social rights. This is why relevant efforts have been taken in every country in order to improve accessibility of public buildings, hotels,

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<sup>22</sup> Bynoe et al. 1990, p.5.

pavements etc. (Belgium, Germany, Ireland, Hungary, the Netherlands, the Nordic countries, Spain) and also the means of road and rail transport.

Important, macro-level organisational solution is the committee for the transport of disabled persons in France; the needs of people with disabilities are taken into consideration also in respect of mass transportation (buses, new underground lines etc.) on a significantly increasing level.

Nevertheless, minimum standards of accessibility are missing in some countries (e.g. Spain, Hungary) and further steps are intended to be taken by governments in accessibility of universities, low-platform buses and accessible taxis (especially Hungary, Spain). Luxembourg was the only country that reported on missing regulations and rules on accessibility. It is an important example, showing that, however significant legal measures may be, substantial progress can also be achieved in their absence as certain transport bodies are making continuous efforts to increase the level of accessibility (low-floored buses, etc.)

### 5.3.1 Accessibility of public transport

Public transport is one of the most important areas of discrimination because, if it is not obstacle-free, it can prevent the disabled person from exercising his rights and from living independently.

Children and young pupils with disabilities might face some problems in admission to normal schools (according to the Dutch report). There is a certain problem of accessibility in sports, restaurants and discothèques (the Netherlands).

In this area the most substantial results were reported by France<sup>23</sup>, Greece, Germany and Sweden (Despouy 1993, p. 36).

### 5.3.2 Accessibility of the built environment

Many reasonable steps were taken by such countries as Hungary and Poland in order to increase the accessibility of the built environment, public buildings, and means of mass transportation.

In connection with housing construction, an earlier investigation, carried out by the UN Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, on the basis of national reports notes with alarm that: “even now, in highly developed countries, buildings, which are not accessible for disabled persons are still being constructed” (Despouy 1993, p. 25).

At the same time, it can be observed that public buildings, such as local authority offices, courts, ministries, restaurants, cinemas, theatres, concert halls, libraries, hotels, pensions and sports facilities, still cause serious problems of accessibility for

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<sup>23</sup> See the extra report referring to the questionnaire of Appendix 3.

physically disabled people, especially in the case of Council of Europe Member States in transition.

Canada, Greece, Germany, Portugal and Sweden reported on the most substantial results in the area of the creation of full accessibility, lowered curbs or curb cuts, the provision of ramps, designation of parking areas, wider lifts, making automatic doors suitable for use by persons with wheelchairs and the creation of suitable toilets (Despouy 1993, p. 36).

#### 5.4 Institutions

*“Normalisation means that the mentally disabled people should achieve a livelihood as close as possible to normal living conditions.”*

(Bank-Mikkelsen)

As a result of the human rights movements, the activity of parents and the continuously developing governmental policies and governmental activity, by the eighties to nineties a marked change of paradigm occurred in the network of institutions caring for mentally disabled persons. It first appeared in its earliest form in Canada and the United States around thirty years ago. A striking and diversified shift can be observed in Europe away from the total, closed, residential institutions, on the one hand towards halfway houses, small group homes and apartment houses, and on the other hand towards the family, the caregiving family, the residential community, the housing federation, and independent living.

The above-mentioned process reached highest standards basically in some Anglo-Saxon and some Scandinavian countries (e.g.: Canada, Ireland, the United Kingdom and Norway). Norwegian policy of closing down large institutions for mentally retarded people and transferring former patients to communal settings for all practical purposes has now been carried through.

Among the Member States submitting reports, this process of *normalisation* is most advanced in the Nordic countries, in Denmark, Finland, Norway and Sweden, and in Canada (Despouy 1993). Special mention should also be made of the results, many very important new developments achieved in legislation and application of the laws affecting the everyday life of disabled people in Austria, Germany, the Netherlands and Switzerland (Záskaliczky 1997).

First, but substantial steps has been taken towards deinstitutionalisation by some NGO-s in Hungary and with the help of the government of the Netherlands and two Dutch foundations.

All of this seems to be understandable. The “classical” total institution not only involves traditional discriminative effects: restriction of the freedom of movement, prevention of the development of the private sphere, the opening of letters, in cases even physical abuse, restriction of the use of leisure time, and strict separation of the genders. In addition, it also causes serious psychological disorders: limitation of personality development, emotional impoverishment, weak development of the self-image, helplessness syndrome, dependency, aggressive and autoaggressive syndromes, etc. (Zászkaliczky 1997, p. 18).

### 5.5 *Income, poverty*

People with disabilities are not discriminated in any Member States from the viewpoint of legal regulations concerning their income (Steinmeyer 1998). However, their practical financial and property standing is different from the average of the rest of the population. According to a well-known and well-documented fact, low-income people – blue-collar and pink-collar workers – have a higher incidence of disability than high-income workers (Gogstad 1968, pp. 138-9; Könczei 1994, p. 77)<sup>24</sup>. Many more blue-collar workers than white-collar workers become disabled on the job because of dangerous equipment, mines, etc.

The aim of disability pension systems – that exist in every Member State – is to compensate for loss of income. However, there is another form of financial benefit in some countries (e.g. Hungary) that can be generally called *costs of disability payment* in order to meet the varying additional everyday costs of disability.

There are several different types of social and economic benefits instituted in reporting countries. Although a wide range of benefits can be found, these are not always harmonised at the country level (Hungary, Poland and Spain). There are countries where access to public medical treatment and rehabilitation are free of charge for disabled people; a characteristic example is Poland. Widely known, important solution for creating new funds is the state monopoly of “ONCE coupon lottery” for creating new chances of visually impaired people and other disabled persons in Spain.

Another problem is that the very low level of income and social benefits may place a significant ratio of disabled inhabitants close to the poverty line (Hungary). Britain gives another example: there is a significant gap between the weekly incomes of people with disabilities and the non-disabled ones (an average of £39 per week at 1988 prices, according to the OPCS survey – Barnes 1994, p. 6).

A further question is the role of wage subsidies. It may help people with disabilities maintain and obtain employment, but this policy has drawbacks (Lunt – Thornton 1994, p. 231). Colin Barnes might be quoted here: “the very act of giving employers a

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<sup>24</sup> The fact is known outside of Europe too: “Americans with disabilities are the largest, poorest, least employed and least educated minority in America” (Griffin 1991, p. 1001).

financial reward for employing disabled workers, within the context of the long history of discrimination and exclusion from the workforce, simply reaffirms the institutionalized belief that they have less to offer than non-disabled workers.”

## 5.6 Education

*“Students with disabilities face a number of unique barriers that may prevent them from pursuing a program of higher education... Without consideration of their unique learning needs, many students with disabilities may be doomed to fail, even before they put their foot inside the door that may offer them the opportunities to be successful...”*

(Jennifer Hill, quoted by the *Canadian report*)

Reasonable steps were taken in the field of education – school integration – in the reporting Member States and observer countries. Nevertheless, discriminatory cases were reported – first of all in respect of persons living with visible disabilities (Canada, Hungary and Spain).

Educational level of people with disabilities is increasing comparing to the rest of the population, according to the country report in France.

Not reported but published data: “the majority of British schools, colleges and universities remain unprepared to accommodate disabled students within a mainstream setting”. (Bynoe 1990, p. 13). Otherwise, discriminatory attitudes of the teaching staff is also proved (Barnes 1994, p. 49).

Disabled people of countries in economic and social transition face with much more difficulties, than the ones of Member States. For physically disabled Estonian citizens, Hungarians and Poles only certain buildings are accessible in higher education, however a special scholarship has been introduced for disabled full-time students in both Poland and Hungary.

Nevertheless, no country has been able to ensure accessibility of all education institutions, although the situation is slowly and steadily improving in the Member States of the Council of Europe.

## 5.7 Polls, prejudice (ATDP-scale) and the role of the media

The role of the media in raising the public awareness and decreasing prejudices and stereotypes has not been mentioned in the national reports. However, it would also be an important indicator of differentiation between disabled and non-disabled people if

the *social distance* were better known. Yuker, Block and Youngg created the ATDP-scale (Attitudes Toward Disabled Persons). The scale is based on a method of the social distance scale that was developed by Emory S. Bogardus. The scale is from *one* (“I would marry him/her”) to *nine* (“I would kill him”).

From the point of the public attitudes, positive developments are reported from two observer states, Poland and Hungary, on the basis of better knowledge on the real life of people with disabilities. More tolerant attitudes were found by different surveys in 1997 in both countries.

## **6 DEBATES ISSUES: THE COSTS AND THE NECESSITY OF NEW LEGISLATION**

### *6.1 The Social and economic costs of non-discrimination*

One of the neuralgic points in the debates over legislation to equalise opportunities is the problem of the subsequent costs. The application in concrete areas – public transport, education, built environment, employment, etc. – of the ban on discrimination involves certain costs. The same is true for positive actions aimed at compensating disadvantages.

The commonly held belief that creating equality of opportunities for disabled persons is a process consuming enormous financial sources has itself practically become a prejudice. Earlier and more recent cost efficiency calculations and cost-benefit analyses show that the real situation is considerably more complex.

If a disabled person is not working, he or she is generally entitled to some kind of disability support. This is an expenditure for the state at macro level. However, if that person enters employment, he or she is not only producing goods or providing a service, that is, participating actively in the real processes of the economy, but also earning an income. The person will pay taxation from this income (which is a receipt for the state) and will also use it for consumption, that is, he or she will be stimulating the other production and service activities of the economy. And, in addition the person's own well-being will be raised to a higher level.

Traditionally very few data of value for analysis are available on the costs of employment of persons living with disability. One source that could be mentioned in now historical: Conley 1965. Another is more recent: O'Day 1996. O'Day cites studies showing that following the occurrence of disability, the employer's costs for providing reasonable accommodation for the worker who has become disabled are typically in the range of 100-2000 USD. 50 % of all such workplace accommodation can be provided for less than 500 USD and 85 % for less than the sum of 2000 USD. The average costs of suitable employment following the occurrence of disability are around 200 USD. It is especially important that – according to firms employing disabled persons – every dollar invested in their employment returns 10.26 dollars over the long term.

### *6.2 The Social and economic costs of discrimination*

(To be completed in the final version).

Not only non-discrimination involves costs, but discrimination as well. A clear social (or *soft*) “cost” is what is paid by a society that is not integrated on a high level. Another one of this kind is: if a society lets discrimination, it undermines its own basis. Discrimination is not a private business of the discriminated person, but it spoils the society as a whole.

If a disabled person does not work, does not pay tax, but receives disability pension or cost of disability benefit or any other social benefit, it reduces the central or regional budgets.

### *6.3 The relevance and limits of law: Pros and cons*

#### *6.3.1 The arguments against non-discrimination legislation*

First, antidiscrimination legislation can not solve every problem, it can not guarantee automatically the realisation of human rights. Second, law has its own limits: legislation can not change old and deep-rooted habits, traditions, ways of thinking, philosophical and cultural foundations of discrimination (fear of the anomalous and the unknown). Third, people will not like more the part of the population the legislation focuses on. Finally, it is very hard to define disability.

#### *6.3.2 The arguments for non-discrimination legislation*

First of all, the “educational” function: it sends a clear message to society, that discrimination against people with disabilities is not acceptable (Bynoe 1990, p. 15). Secondly, the elimination of discrimination and consequently also a ban on it, is a value in itself. Third, it might be a leading rule in the case of any other discriminated minority. Finally, it might lead to a more integrated society.

Furthermore, definition of disability might be called a difficult task, however, *it has already been done by existing legislation.*

## 7 CONCLUSIONS

*“Disability discrimination is a European-wide phenomenon which has consequences at the European level. Discrimination makes it difficult, or impossible, for disabled citizens to exercise many of the rights conferred on them by European law, and European economies suffer as the contribution which people with disabilities can make is artificially restricted.”*

(Lisa Waddington)

The consultant is not in a position of suggesting recommendations. However, after examination of the reports, some conclusions might be drawn.

Integration of people with disabilities into the society is a general aim of the social policy in every reporting country. Numerous strategies like special financial support and services, different rehabilitation models etc. are established within the systems, based on the local, municipal, and central levels. The special services usually play secondary roles, since as a rule, the same procedures are applied for people with disabilities as for the rest of the population.

In a nutshell: basically slow, but very important and far reaching steps have been taken in Member States and observer countries, first of all in the field of affirmative actions, positive measures in order to compensate disadvantages of disabled citizens all over Europe (areas of mobility, self-determined living, technical aids, benefits etc.<sup>25</sup>). Unfortunately this does not mean that the existence of discrimination, that dominated the character of past centuries, is already a phenomenon of bygone days<sup>26</sup>.

A lot of positive new developments were reported by several Member States – e.g. especially Ireland – for disabling barriers and enabling environments.

The sociological approach to the topic of discrimination of people with disabilities – even though it has only been a first step – looks far beyond the relationships and interactions between Member States and national or supranational institutions. In the future it will take into consideration not only these actors but it will focus on pressure groups, interest groups, national and international organisations of disabled people too.

The sociological approach is a fairly modern one. It eliminates such old-fashion views, like pity, charity or like the one that handles people with disabilities as “victims”. This approach eliminates so called “personal tragedy theory” and also the myths behind old fashion views. These myths are

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<sup>25</sup> See first of all the country reports, but also position papers of INGO-s.

<sup>26</sup> See first of all the position papers of INGO-s (e.g. Wasemann, EDF p. 2).

- *the myth of incapability*. According to it, a person with a disability can not become a useful member of the society;
- *the myth of charity*: it postulates that charity type actions might solve every problems of disabled people;
- *the myth of poverty*, that assumes that the only especially rich countries with high level of GDP have the chance to take reasonable steps for disability issues;
- and last but not least *the myth of countability*. According to it, there are only a very few people with disabilities, so the problem is not of a high importance.

Using this approach *as a start*, it became possible to concentrate on discrimination itself. To concentrate not only on *the result* of discrimination – result based theories –, not only on *the process* of discrimination – process based theories –, but, on *anti-discrimination project* (Andrew Koppelman). Anti-discrimination project “seeks to reconstruct social reality to eliminate or marginalize the shared meanings, practices, and institutions that unjustifiably single out certain groups of citizens for stigma and disadvantage” (Koppelman 1996, p. 18).

In my view, the anti-discrimination project consists of at least two parts: social movements against discrimination and introducing equal opportunity and/or non-discrimination (anti-discrimination) legislation. In the case of disabled people – paraphrasing Koppelman’s terminology – the ultimate goal of the non-discrimination (or anti-discrimination) project is to eliminate not merely inequality based on disability, but any type of *disabilitism itself*.

This seems to be the task on the long run.

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SOME EXAMPLES OF DISCRIMINATION<sup>27</sup>

*“Many service providers, such as restaurants, cinemas and bars, discriminate against disabled people both through prejudice and failure to make a reasonable accommodation. People who use wheelchairs are frequently denied access to cinemas because they are classified as a 'fire risk'; blind people who are accompanied by a guide dog are excluded from restaurants because their animals are regarded as a 'health risk'; whilst other disabled people, such as those with a learning impairment or severe hearing impairment, are excluded from leisure facilities simply because they do not present the 'right image'. It is not only providers of leisure services which discriminate. Other services, such as transport, are either not accessible at all to those with a mobility disability, or can only be used if accompanied by one or more non-disabled travellers etc.”*

(L. Waddington 1995, p. 14)

This collection of cases of discrimination, not so much of a legal nature as in everyday life, could serve as a basis for similar investigations in the future.

### 1 Cases at the EU level<sup>28</sup>

*Education:* many children are still excluded from normal schools simply because of their limited mobility, sensory impairments, or difficulties in communicating and learning. The authorities are often not aware of the children's real abilities and potential, or continue to be insensitive to them. Disabled children are still too often confined to residential institutions, where despite specialized care, they are isolated from the rest of the world, and are unable to make or maintain normal social contacts. (National High Council 1997, p. 27)

*Employment:* there are official statistics which indicate that *in the European Union* the unemployment rate for persons with disability is two or three times higher than that for the rest of the population. In times of economic recession their situation becomes even more difficult: together with other disadvantaged groups in society, they are the first to be dismissed. As a result, in periods of uncertainty they have to cope with considerably more difficulties than others. Moreover, economic independence is an essential condition not only for the exercise of general human rights but also for the enjoyment of social and economic rights. Consequently, economic disintegration has serious consequences for their quality of life.

<sup>27</sup> Some further examples were mentioned by representatives of international non-governmental organisations during the 5<sup>th</sup> session of Working Group in Bonn, 18 November, 1998 (INGO hearing).

<sup>28</sup> The EU cases were mentioned by *Mr. A. Gubbels*, representative of the European Commission at a colloquium in Brussels. (National High Council 1997, pp. 27-28).

*Transport:* “access (in the wider sense of the term) is very important in our highly mobile society. Nevertheless, public transport still remains, to a great extent, inaccessible. This situation is made worse by architectural barriers. Although technology has made noticeable progress in the field of communications, more could be done to maximize use of the above technology. This could ensure that future developments respect the principle of equality and universal service. The principle “designed for all” has many advantages for all groups in society.” (National High Council 1997, pp. 27-28)

*Housing:* “due to the limited amount of housing available, disabled persons do not have access to enough suitable housing, or to housing that can be adapted. One should stress that this has negative effects, not only for disabled persons, but also for the increasing number of elderly people in Europe...” (National High Council 1997, p. 28)<sup>29</sup>

“Discriminatory practices, such as locating polling stations in buildings which are physically inaccessible for wheelchair users, or failing to provide ballot papers with large print or in Braille, can effectively nullify this right. The situation is not remedied by allowing disabled people to use a proxy or postal vote, since the original discriminatory practices deny those affected, the choice concerning the means of voting which is given to the non-disabled population.” (Waddington 1995, p. 15)

## 2 Cases in Member States

### *Cases in France*<sup>30</sup>:

There are no specific cases mentioned by the French report.

“Christian, who is very short-sighted and uses a wheelchair was refused entry several years ago by a restaurant owner in Bordeaux who stated in front of witnesses: “I let dogs into my restaurant, but I do not accept the handicapped.”

“Christian lodged a complaint with the Groupement pour l'Insertion des Personnes Handicapées Physiques at Aquitaine (Association for Integration of Physically Disabled Persons) introducing a civil action on his behalf. The court ruled, withdrawing the driving licence for a period of one year as an alternative sentence as well as ordering payment of several fines. The ruling set a precedent.” (National High Council 1997, p. 60)

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<sup>29</sup> One should realise that the problems of people with disabilities are closely linked with that of elderly persons on the Community level: “at least two-thirds of disabled people in the Union are elderly.” (Hantrais 1995, p. 126.)

<sup>30</sup> The French cases were listed by *Mr. Roland Roux*, founder and president of the GIHP (Groupement pour l'Insertion des Personnes Handicapées Physiques) at the same colloquium. (National High Council 1997, p. 60).

“In the Gironde, on a beach in the Bassin d’Arcachon, inhabitants circulated a petition for removal of mentally disabled young persons on the pretext that they were being disturbed by them.” It should be noted in connection with the Gironde case that information is not available on the whole process of the case. There is only one sentence taken out of context. It cannot serve as a basis for any far-reaching conclusions.

*Roland Roux*, in the article already cited, in addition to the above notes that in France only 5 % of disabled children attend normal schools. (National High Council 1997, p. 59).

*A German case:*

“In October 1992 a German court granted a family on holiday a 10 % reduction in the price of the holiday because the family took their meals together with disabled persons in the hotel restaurant. The court felt that the sight of disabled persons – particularly at meals – could spoil the pleasure the holiday was intended to provide. For this reason the court awarded damages amounting to a 10 % reduction.” (National High Council 1997, p. 92). *Following this case Germany has changed its legal rules in order to avoid these kinds of cases.*

*A case in Ireland:*

“People with disabilities are the neglected citizens of Ireland. On the eve of the 21<sup>st</sup> century, many of them suffer intolerable conditions because of outdated social and economic policies and unthinking public attitudes. Changes have begun to come about, influenced by international recognition that disability is a social rather than a medical issue, but many of those changes have been piecemeal. Public attitudes towards disability are still based on charity rather than on rights, and the odds are stacked against people with disabilities at almost every turn. Whether their status is looked at in terms of economics, information, education, mobility, or housing they are seen to be treated as second-class citizens.”<sup>31</sup>

*Cases in the Netherlands:*

There are no specific cases mentioned by the Dutch report. However, there are certain kinds of discrimination (e.g. unequal treatment on the labour market), to be discussed in the following, thematic chapters of this paper.

On the other hand as it was described by the Dutch government, in order to prevent the possible discrimination conveyed by the usual language (*linguistic discrimination*), there is a definite trend to change the linguistic description of people with disabilities. This is the term “people with limitations”, instead of people with disabilities. (The same terminology is used in some other countries, including Hungary.) Of course,

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<sup>31</sup> *Disability Awareness in Action*, Newsletter 44, December 1996, p. 1

there is a certain limit to the use of *politically correct* concepts. If someone uses euphemistic ones, they might not be understood. But otherwise, if one makes a distinction between terms and calls the phenomenon by its own name, it might be understood as a differentiation between people, as result of the prejudice. This is what disability literature means by “catch of calling by name”. (Könczei 1994, pp. 84-85)

*Cases in Spain:*

“We, the 18 people who live in the home for disabled people in calle Amílcar 36 in Barcelona have various severe physical disabilities. The home is a public one and was inaugurated in 1983 with the aim of facilitating our social integration and to help us normalise our lives.

Now, after a change of management, we are in a very unpleasant situation. On the one hand, we suffer under many rules that prevent us from normalising our lives and violate our human rights: visitors are forbidden inside the home, restricted to a ‘visiting room’ in the same building but outside the home; restricted visiting hours; restriction on telephone calls; we are forbidden to smoke, drink alcohol or have sexual relations.

Furthermore, our right to privacy is daily violated: we have to show our naked bodies, even while performing basic bodily functions, to all the men and women who pass through the home (a steady stream of trainees).”<sup>32</sup>

“In *La Coruna*, north-west Spain, Dolores ('Lola') Vina Cotelo was confined by her parents in 1957 to a dank hole six feet deep. Today, she is almost totally blind, communicates in grunts and has lost the use of her arms and legs through atrophy. She was taken into care in February after being discovered by volunteer health visitors in a cellar at the family’s cottage. She was covered in her own faeces.

According to her mother and other family members, Lola entered the hole 'voluntarily' when she was four years old, refusing to come out again. The family swear that they 'treated her as she wanted to be treated' and doctors have found no evidence of malnutrition.

Yet the police are considering bringing charges of false imprisonment against the family. According to a spokesman, not everything fits: the family say that she was born blind but doctors don't agree.

Lola is now 44. She lived in a semi-rural section of La Coruna with her sister, her sister's husband and their children, as well as her mother. The family claim she sometimes left the hole.”<sup>33</sup>

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<sup>32</sup> *Disability Awareness in Action*, Newsletter 47, March 1997, p. 7

<sup>33</sup> *Disability Awareness in Action*, Newsletter 48, April 1997, p. 2

### *Cases in the United Kingdom*

"They (an autonomous unit for employment practice – *Gy. K.*) had been recruiting a new care manager for an area, all eligible candidates were interviewed and the panel unanimously agreed on the best candidate but he was not employed as he was disabled. They did not think it was appropriate that a disabled person should be in charge or have influence over the care provisions of other disabled persons because he might be prejudiced. I believe it was merely coincidental that the candidate was black. The matter is now in the hands of the lawyers." (National High Council 1997, pp. 83-84)

"Another example was a recent incident at a large multi-screen cinema where a person of small stature, .95 metre aged 28 was refused admittance with her boyfriend, of 'average height' on the grounds that other patrons might be offended by their appearance together." (National High Council 1997, p.84)

"A hospital trust in the UK recently decided to refuse emergency admissions to those over 65 as they were too costly due to the multiple problems, including disabilities through age which they presented. That policy had to be withdrawn because of the political storm it caused, but it had been promulgated in the first place." (National High Council 1997, p. 84).

"All of this paints a bleak picture, but in fairness it has to be said that these occurrences are few and far between. Well we believe that they are, for those I have mentioned are only the ones that have come to light. Who is to say that the frequency of occurrence is not like the iceberg with 9/10 of its mass below the water. And all of this is happening in a member state which has national legislation to supposedly outlaw discrimination against disabled persons." (National High Council 1997, p. 84).

### *Further cases:*

"A 1989 case, decided by the European Court of Justice, has however made it clear that not all disabled people in paid employment in a Member State other than their own, will qualify for the status of Community worker, and therefore, cannot claim any of the rights associated with this status. The case concerned involved a German national, Mr. Bettray, who was living in the Netherlands. Mr. Bettray was a former drug addict who had obtained employment under the Dutch Social Employment Scheme. The aim of the work provided under this law is 'maintaining, restoring or developing the capacity for work' of persons who are able to perform some kind of economic activity, but who are not yet able to take up open employment.

The Court held that although the scheme under which Mr. Bettray was employed contained elements of a normal employment relationship, these elements were merely the means of achieving the dominant social objectives of the programme. The scheme, therefore, had a primarily social character, and had the objective of promoting the reintegration of those employed under it. It held that the work was not an 'effective and

genuine' economic activity because it constituted a means of rehabilitation, and was adapted to the needs and abilities of each person, with the objective of enabling them to take up open employment as soon as possible. According to the Advocate General, who shared the view of the Court, the participants in the scheme were, therefore, not available for work in the open labour market, and as a result, not those at whom the provisions covering the free movement of workers were aimed. Mr. Bettray was, therefore, not a Community 'worker' and not entitled to a residence permit and the other associated benefits under Community law.

This amounts to a denial of one of the fundamental rights associated with European citizenship on the grounds of disability. Mr. Bettray received a monetary wage, had a labour contract, was subject to standard conditions of employment and performed work which was of benefit to the community, and yet, he was denied the status of Community worker, because his job contained elements of rehabilitation. This situation is particularly disturbing given that there are over 300,000 people with disabilities who are employed in a sheltered or semi-sheltered environment in the Community, and who, under the *Bettray* case, are potentially excluded from the benefits of this particular Community policy.

Whilst such workers, many of whom work full-time and receive a wage equal to or in excess of the national minimum wage, are being denied the right of free movement, other individuals, who work only a few hours a week, or whose income is so low that they are dependent on social security payments, are regarded as workers for the purposes of Community law. We do not seek to argue that such people should be denied the status of Community worker – but, that this status be extended to cover all disabled people in employment as well.” (Invisible 1995, pp. 13-14).

#### *Cases in the observer states*

##### Hungary

Numerous cases of discrimination are known in Hungary. However, only one has come before a court. Despite the fact that two non-profit organisations (Motivation Foundation for People with Physical Disabilities and Disability Rights Advocates Hungary), collect information on such cases, with one exception, the disabled victims of discrimination have not dared to take their case to the courts, fearing that further disadvantages will result.

## THE 25 QUESTIONS<sup>34</sup>

From the point of view of the final version of this comparative summary, any comments, corrections are still welcome. Furthermore, from the same viewpoint, answering some further questions country by country seem to be very useful if data are available. These are:

### *1 Representation*

- i) What is the ratio of persons with disabilities in the general population?
- ii) What is the method of this estimation?

### *2 Employment*

- i) Unemployment rate in the general population compared to the group of people with disabilities.
- ii) The labour market participation rate of active disabled population vs. the active part of the general population.
- iii) The trend of changes in i) and ii) during the past ten years.
- iv) The cost of creating a new workplace for a person and the same in the case of a disabled person.

### *3 Accessibility*

- i) What is the estimated ratio of accessible compared to non-accessible public buildings and public transport?
- ii) How has the situation been changed during the past ten years?
- iii) The extra cost of accessible building, accessible rebuilding and the accessibility of public transport.

### *4 Institutions*

- i) What is the percentage of people with disabilities living in families, institutions or half-way-houses, apartment-houses and group homes?
- ii) The trend of changes in the past ten years.
- iii) The cost of creating and running residential institutions, compared to that of other means of living conditions.

### *5 Income, poverty*

- i) The per capita income of the active population versus the per capita income of the disabled population of active age.

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<sup>34</sup> Only two governments, those of France and Poland, have answered the questions so far. I appreciate very much these efforts and am grateful for them. But embedding the very useful and important French and Polish answers would have created a hardly explainable imbalance in this study. So I had to decide not to include them here, but wait for the final version.

ii) What percent of the general population live close to – or below – the poverty line? The same percent for the disabled population.

iii) The trend of changes in i) and ii) during the past ten years.

iv) The extra costs of disabled living. (In the cases of deafness, blindness, mental and physical disability).

#### *6 School integration*

i) According to the recent statistics, what is the percentage of mainstreamed disabled children?

ii) How has the situation been changed during the past ten years?

iii) Are there figures on the costs of school integration?

#### *7 Education.*

i) The educational level of the total population compared to people with disabilities.

ii) What percentage of them completed elementary school, could graduate from high school, or succeeded in obtaining a degree from a college or university?

*8 Special services.* There is very little usable information on special services, provided on the community level (community-based rehabilitation etc.).

9 Polls, prejudice (ATDP-scale) and the role of the media.

10 By which means do Member States support independent living, peer counselling and other services run by people with disabilities themselves or by their NGO-s?