

Dr. Nikolett Hadi
Assistant, Faculty of Law, University of Pécs

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THE RIGHTS OF DISABLED PERSONS IN THE EU AND THE IMPLICATIONS FOR THE MEMBER STATES*

Abstract: The EU regards the issue of persons with disabilities as a human rights issue. It also follows from this that the alleviation of the disadvantages deriving from disabilities is a legal issue the handling of which cannot be exclusively left to the discretion of the Member States. The domestic regulations of the Member States pertaining to persons with disabilities must also comply with the requirements of international and supranational regulation. The disability law should be interpreted in the framework of a multi-pillar system. The study examines the rules of the Charter of Fundamental Rights of the EU pertaining to the disability and analyses the effect of the Convention on the Rights of Persons with Disabilities. In this context the following aspects are particularly important: the making the Charter the part of primary EU legislation, EU accession to the Protection of Human Rights and Fundamental Freedoms, the fundamental pillars of EU regulations concerning persons with disabilities.

Key words: persons with disabilities, rights of persons with disabilities, exclusion, inclusion, Charter of Fundamental Rights, obligations of Member States

I. INTRODUCTORY REMARKS

The exclusion and the danger of exclusion of persons with disabilities from social and economic life are becoming more and more noticeable in the Member States of the European Union. In order to eliminate this phenomenon, the Union, as one of its objectives, has defined the improvement of the situation of persons living with disabilities. It puts a special emphasis on the assurance of the full enjoyment of rights and the promotion of their participation in the social and economic life of Europe.

The EU deals with the situation of disabled persons as a human rights issue. It follows that the alleviation of the disadvantages deriving from disabilities is a legal issue; therefore the treatment cannot be exclusively left to the discretion of the Member States. It is also supported by the fact that the related domestic regulations of the Member States must also comply with the requirements of international and supranational regulations.

II. INTERNATIONAL LEGAL FRAMEWORK

The connection between human rights and disability is manifold; here I will focus on only two aspects. Firstly, human right violations can lead to disability; secondly, persons with disability are particularly exposed to the risk of suffering such violations. According to the United Nations Organisation the condition of at least one-third of the world's 650 million persons with disability was caused by human rights violations. In my opinion this phenomenon opens up a new aspect of handling disability as human rights issue and highlights the indisputable role of human rights conventions in this respect as well. Besides, provisions of international human rights conventions, which apply to everybody and can be connected to all persons, protect the disabled as well and can also prevent the development of disabilities arising from human rights violations. In addition, this universal approach reinforces the principles of equality and non-discrimination, which are, *inter alia*, included in human rights instruments.

1. The relevant UN human rights conventions are as follows:

- European Convention for the Protection of Human Rights and Fundamental Freedoms;
- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment;
- Convention on the Rights of the Child;
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

There are some international and regional human rights conventions exclusively protecting the rights of persons with disabilities, or having some provisions relating them. These include:

- ILO Convention concerning Vocational Rehabilitation and Employment (Disabled Persons)
- Convention on the Rights of the Child (Article 23);
- European Social Charter (Article 15);
- *Convention on the Rights of Persons with Disabilities*.
- Non-binding international instruments (such as declarations and rules) which are useful in interpreting international standards and national legislation implementing them also constitute a part of the international legal background. These are for instance:
 - World Programme of Action concerning Disabled Persons;
 - Standard Rules on the Equalization of Opportunities for Persons with Disabilities;
 - Salamanca Statement and Framework for Action.

Legislation at national level is essential in promoting the rights of persons with disabilities. While international law plays an important role in promoting the rights of persons with disabilities, domestic legislation remains one of the most effective means of improving their social status. *International norms concerning disability specify "common standards" for the situation of persons with disabilities. These standards need to be reflected in policies and programmes that can result in positive changes in the lives of persons with disabilities.*

Any state shall comply with international level regulation – being it either legally binding or soft law – not only because such rules have been adopted by the international community, but also because they reflect values and approaches which are necessary for treating everyone as a person with equal dignity and for the inclusion of persons with disabilities into society.

2. At international level, the Convention on the Rights of Persons with Disabilities is the core document. Its purpose is to make States Parties undertake the obligation to ensure that all persons with disabilities be able to enjoy their equal human rights on an equal basis with others and that these rights be guaranteed for them at state level as well. The Convention is not confined to the general reinforcement of human rights which are contained in other international conventions; but the rights included are specified in the light of the experiences gained related to the exclusion of and the discrimination against persons with disabilities. It is of great importance that the European Union signed the Convention on 30th March 2007, and since then all 27 Member States have signed it together with 120 other states from all over the world. Now that the process of ratification has been accomplished, the EU is the first international organisation to officially be a signatory to the Convention. Since the Convention obliges the parties to ensure that disabled persons could exercise their rights on an equal basis with other citizens, it means that all Union legislation, policies and programmes shall comply with its stipulations.

Obviously, the direction of the protection of fundamental rights in the European Union differs from that of both at national and international level. However, the latest developments demonstrate that the international, supranational and national levels – at certain aspects and in certain fields – tend to get closer to each other. This is also manifested in rendering the Charter of Fundamental Rights of the European Union (hereinafter the Charter) a part of the primary law of the EU and in the reference to the constitutional traditions of the Member States and the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ECHR).

III. THE EFFECT OF ARTICLE 6 OF THE TREATY ON EUROPEAN UNION

1. THE CHARTER AS A PART OF PRIMARY EU LEGISLATION

The Charter of Fundamental Rights of the EU (hereinafter the Charter) became a legally binding measure upon the entry into force of the Lisbon Treaty. Pursuant to Article 6, the Union recognises the rights, freedoms and principles included in the Charter; this Charter is just as binding as the Treaties. “The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.”

Making the Charter a primary source of Union law also conveyed the message that the EU is the union of citizens, its “owners” are the European Union citizens. In my view it is of great importance that *in the case of Union citizens living with disabilities the restricted possibility of the enjoyment of rights due to their disabilities must be combated at Union level. They must be provided with the possibility to enjoy their fundamental rights on an equal basis with other Union citizens.*

The rights, freedoms and principles laid down in the Charter are to be interpreted in accordance with the general provisions regulating interpretation and application while giving due consideration to the explanations provided in the Charter which define the origin of the particular provisions. Chapter VII of the Charter deals with the scope of its application, the scope and meaning of the rights and principles, the level of protection and the prohibition of the abuse of rights.

2. EU ACCESSION TO THE ECHR

By virtue of the ECHR the Contracting Parties must ensure human rights to everyone under their jurisdiction. The ECHR – probably due to the time of its adoption – does not contain any special provisions pertaining to persons with disabilities and issues concerning them are not highlighted therein. Nevertheless the provisions of the ECHR apply to disabled persons as well. Pursuant to Article 14, the enjoyment of the rights and freedoms set forth in the Convention “shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” *Article 14 of ECHR does not expressly specify disability as a ground for discrimination, which consequently can be classified into the category of the prohibition of discrimination on the ground of any “other status”.*

Article 6(2) of the TEU stipulates that the Union accedes to the ECHR and this accession does not affect the Union’s competencies as described in the Treaties. It should be highlighted that the Lisbon Treaty, which entered into force on 1st December 2009, empowered the European Union as a subject of international law to accede to the ECHR and Protocol No. 14 to the Convention, which entered into force on 1st June 2010, expressly stipulates that the Union may accede to the Convention. As a result, the requirements of public international law concerning the accession of the EU to the ECHR have been fulfilled.

The Union’s accession to the ECHR will complement the system of protection of fundamental rights by making the European Court of Human Rights competent to review Union acts. “This external judicial review should further encourage the Union to follow an ambitious policy for fundamental rights: the more the Union tries to ensure that its measures are fully compliant with fundamental rights, the less likely it is to be censured by the European Court of Human Rights.” In my opinion this effort *projects and presumes the creation and development of a Union policy strengthening the human rights status of persons with disabilities.* This objective is also expressed in the *European Disability Strategy 2010-2020*, according to which *the aim of the Commission is to work together with the Member States to tackle the obstacles to a barrier-free Europe*, while having regard to recent European Parliament and Council resolutions.

3. CONSTITUTIONAL TRADITIONS AND REFERENCE TO THE ECHR

Pursuant to Article 6(3) of the TEU, fundamental rights, “as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law.”

The purpose of Article 52 of the Charter is to set forth the scope of the rights and principles laid down in the Charter and the rules of their interpretation. The purpose of paragraph 3 thereof is to ensure the harmony between the Charter and the ECHR by stipulating the rule according to which as long as the rights contained in the Charter correspond to the rights guaranteed by the ECHR, the meaning and scope of those rights – including the allowed restrictions – are the same as those laid down by the ECHR. This in particular means that in the case of determining any limitations to these rights, the legislator must comply with the provisions pertaining to limitations contained in the detailed rules of the ECHR. It follows that these provisions must

be applied to the rights contained in the abovementioned paragraph 3 without any prejudice to the autonomy of Union law and that of the Court of Justice of the European Union (hereinafter CJEU). It should be emphasized that any reference to the ECHR concerns both the Convention itself and the Protocols attached to it. The content and scope of the ensured rights are not defined merely by these documents, but they are also undoubtedly shaped by the case-law of the European Court of Human Rights and the CJEU.

Constitutional traditions represent the manifestation of the rights of Member States at the highest level, since they include principles laid down in constitutions. As Member States participate in the activities of the Union in the manner and to the extent defined in their constitutions, these traditions also form the basis of the Union. This is the reason why it would be unthinkable to create a Union legal order and a system of protection of rights which were alien or contrary to the traditions of Member States.

Human rights and fundamental freedoms form the core of the basis of the national constitutions of Member States as the enforcement and protection of these rights is the most important fundamental value-centred element of the rule of law in a constitutional state where it has evolved through the democratic development of the constitution. For this reason shaping constitutional regulation(s) in respect of disability is also of great importance. In this case acceptance and inclusive conduct towards persons with disabilities is granted constitutional protection.

As regards the regulation concerning disability in the Member States of the European Union, among the constitutional provisions pertaining to disability, one may find provisions *expressly prohibiting discrimination*, provisions *encouraging social participation* of persons with disabilities and *provisions imposing a wide-scope obligation to state action*. Further, there are some *constitutional regulations concerning sign language*. It is a step forward in Hungary that the new Fundamental Law, unlike former constitutional provisions, contains express provisions on persons with disabilities: the category of disability has been included in the grounds for discrimination; moreover, both the protection of persons living with disabilities and the protection of the sign language have been laid down as state objectives.

In respect of taking into consideration constitutional traditions it should be emphasized that the rule of interpretation contained in Article 52(4) of the Charter and Article 6(3) of the TEU are based on each other. The wording lays stress upon the approach taken by the CJEU in respect of common constitutional traditions. According to this rule, instead of the rigid approach based on the principle of the “lowest common multiple”, the relevant rights included in the Charter should be interpreted in a manner ensuring a high level of protection which complies with Union law and is in accordance with the common constitutional traditions of Member States. *Thus it means that the level of protection in the regulations of the Member States pertaining to disability might even rise in the future.*

4. “HORIZONTAL” IRREVERSIBILITY CLAUSE

Article 53 contains a so called “horizontal” irreversibility clause, which entails the recognition of other legal mechanisms – especially the constitutions of the Member States and international instruments concerning human rights and fundamental freedoms. This provision stipulates: “Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights

and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions." In accordance with this recognition, the principle of the "most favourable provision" is to be applied: the level of protection granted by the Charter cannot be lower than the protection granted by the provisions of the instrument referred to.

It follows from all this that *the regulation of any Member State must comply with the provisions of the Charter and the ECHR as well as with the judicial practice of Strasbourg and Luxembourg*. In order to throw a stronger light upon this regulation it is worth examining the fundamentals of the Union provisions pertaining to persons with disabilities.

IV. EU REGULATION PERTAINING TO PERSONS WITH DISABILITIES

Articles 10 and 19 of the Treaty on the Functioning of the European Union (hereinafter TFEU) and Articles 1, 21 and 26 of the Charter form the ground for the regulation pertaining to persons with disabilities. Under the provisions referred to, the Commission will promote equal treatment of people by using existing EU legislation and implementing an active policy to combat discrimination and promote equal opportunities. In addition, the Convention on the Rights of Persons with Disabilities has a decisive role: becoming a Party to the UN Convention has enabled the EU together with its Member States to coherently fulfil the obligations stemming from the Convention and exercise the rights transferred by it in the areas of shared competence.

1. ARTICLES 10 AND 19 OF THE TFEU

Pursuant to Article 10 of the TFEU, the Union shall combat discrimination based on disability in defining and implementing its policies and activities. In addition, it meant a turning point in the disability policy of the Union that Article 13 of the Amsterdam Treaty specified discrimination on the ground of disability separately. It should be emphasized that Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, which serves as the basis of the community's disability policy, is also based on this Article. Pursuant to paragraph 1 of Article 19 of TFEU (ex Article 13 of TEC) without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. It should also be highlighted that according to paragraph 2 – by way of derogation from paragraph 1 – the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonisation of the laws and regulations of the Member States.

In the European Union the objective of the Commission is to ensure the implementation of Directive 2000/78/EC, which approaches the issue of combating discrimination on the ground of disability from the aspect of employment. In the Directive the general framework of combating

discrimination on the ground of disability is defined from the aspect of implementation in the Member States. According to it – pursuant to Article 5 of the Directive – *in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, Member States shall adopt reasonable measures.* This means that the relevant regulation of the Member States must *oblige employers to take appropriate measures to enable a person with a disability to “(...)have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.”* It should be noted that this burden on the employer is not deemed to be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned. Pursuant to Article 7 of the Directive *Member States may adopt provisions on the protection of health and safety at work or measures aimed at promoting the integration of persons with disabilities into the working environment.*

It is important from the point of view of guarantees that the provisions of the Directive are emphasized as *minimum requirements.* This means that the Member States may introduce measures which are more favourable than the ones included in the Directive. However, the implementation of the Directive cannot constitute grounds for a reduction in the level of protection against discrimination already afforded by the Member States. In my opinion it follows from the Directive that now the main task of the Member States is to *fulfil the obligation to legislate.* Pursuant to Article 18 of the Directive entitled Implementation, Member States were to adopt the laws, regulations and administrative provisions necessary to comply with the Directive by 2 December 2003 at the latest or they could entrust the social partners – upon their request – with the implementation of the Directive as regards provisions concerning collective agreements. Member States could have an additional period of three years, if necessary, to implement the provisions of the Directive on disability – and age – discrimination. In Hungary, in compliance with the Directive, Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities provides for legal remedies for injuries suffered in the area of equal treatment due to disability.

2. THE PROTECTION OF PERSONS WITH DISABILITIES ON THE BASIS OF THE CHARTER

A) PREAMBLE

It is expressly declared in the Preamble of the Charter that the Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In my opinion, this multilevel approach can also be detected in the provisions of the Charter pertaining to persons with disabilities.

The statement of the Preamble stipulating that the exercise of the rights specified in the Charter “[...] entails responsibilities and duties with regard to other persons, to the human community and to future generations” is of special importance in respect of disability. The

objective of the European Disability Strategy 2010 – 2020, on the basis of which it is possible to set in motion a process to empower people with disabilities so that they can participate fully in society on an equal basis with others, can be related to this expectation. To succeed in creating intelligent, sustainable and inclusive growth, the full economic and social participation of people with disabilities is also necessary.

It can be claimed that the Preamble of the Charter – with special regard to the values listed therein – ensures an appropriate basis and framework for the provisions of the Charter prescribing the protection of persons with disabilities.

It is my opinion that, *even at the level of Member States, efforts should not only be made to adopt constitutional provisions pertaining expressly to disability but also to achieve an accord between all parts of the text of the Constitution – including the Preamble – and the objectives of all provisions concerning disability.*

B) HUMAN DIGNITY

Human dignity is an abstract and complex concept which is difficult to define. Its legal content cannot be unambiguously ascertained by empirical examination. It does not concern clearly defined life situations but refers to the general manner of human existence. Article 1 of the Charter lays down, “Human dignity is inviolable. It must be respected and protected.” The right to human dignity as a protective right primarily means that all the obligors of fundamental rights must refrain from interfering with human dignity. Under the requirement of the duty of respect, the content of Union law should be developed in a manner so as to ensure that dignity is not violated in the course of applying its norms. Protection also involves the active conduct of obligors. It should be stressed that none of the rights laid down in the Charter may be used to harm the dignity of another person. The dignity of the human person is part of the substance of the rights laid down in the Charter.

In respect of persons with disabilities, equal treatment as “the leading idea of treatment as a person with equal dignity” means that their human dignity and life are inviolable and equal with all others regardless of their state of disability. In my opinion *it follows from this that the main obligation of the Member States is to shape their legislation in a manner so that it takes into consideration the disability of the persons concerned and also the differences existing between persons.* It is the responsibility of the Member States to create the framework for the exercise of rights for persons with disabilities and to ensure the minimum requirements necessary for this. Member States must ensure the *realisation of equal opportunities in all areas of social life in respect of persons with disabilities.* I personally believe that in this respect a level of *reasonable accommodation can be highlighted which means “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.*

C) ARTICLES 21 (1) AND 26 OF THE CHARTER

There are two approaches concerning the regulation of the rights of persons with disabilities in the Member States of the European Union, which are reflected in the relevant articles of the Charter. Common law legal systems aim to realize the equal treatment and the equal opportunities of persons with disabilities mainly by the prohibition of discrimination. In European countries with a continental legal system the conception giving preference to social welfare prevails, according to which the life situation of those concerned should be improved by measures providing active support. The regulation laid down by the Charter is of outstanding importance because it contains both solutions: Article 21 includes disability as a prohibited ground for discrimination in line with the common law method of regulation, while Article 26 bears the marks of the continental regulatory solution: “The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.”

The scope of application of Article 21 (1) deviates from that of Article 19 of TFEU, which confers certain powers on the Union in the interest of adopting legislative acts against certain forms of discrimination. In contrast, this is not the case in respect of Article 21 (1). This article applies to discrimination effectuated by Union institutions and organs in the course of exercising the powers transferred to them under the Treaties and by the Member States in the course of implementing Union law. Article 21 (1) of the Charter is based on Article 14 of the ECHR declaring the prohibition of discrimination and Protocol No. 12 thereto laying down the general prohibition of discrimination. Article 14 of the ECHR did not expressly specify disability as a ground for discrimination, which consequently can be classified into the category of the prohibition of discrimination on the ground of any other status. However, Article 21 (1) of the Charter expanded the grounds for discrimination; thus, disability was also included in the list.

According to the Explanations to the Charter, the fundamental rights set out in Article 26 are based on Article 15 of the European Social Charter (hereinafter ESC) and on point 26 of the Community Charter of the Fundamental Social Rights of Workers. According to point 26, all disabled persons, whatever the origin and nature of their disablement, must be entitled to additional concrete measures aimed at improving their social and professional integration. Article 15 of the ESC sets forth “the right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement.” Thus, as regards employment, the ESC puts rehabilitation and employment in the centre.

It should be highlighted that on the basis of the provisions of Article 26 of the Charter persons with disabilities can rely on a protective right created in a relatively complex manner. The emphasis is placed on the Union respecting the measures which ensure the independence, social and occupational integration and participation of those concerned in the life of the community. *The article pertaining to the integration of persons with disabilities does not originate claim rights, “these are only rights to be respected”. The right to be respected refers to participation in the life of the community.* The imperative of respect presupposes the existence of a right since only the existence of something can be respected.

It follows from the above that *it is the responsibility of the Member States to elaborate the protection of the rights of persons with disabilities on the basis of the framework stipulated in the Charter. Thus Member States – in accordance with the actual potential of their economies – must ensure the operation of a system of institutions counteracting the disadvantages suffered by persons*

with disabilities. Since there is no sharp difference between Articles 21 (1) and 26, the provisions contained therein convey Member States the message that the *measures concerning rehabilitation must also be implemented in a manner which takes into consideration the prohibition of discrimination.*

D) FURTHER PROVISIONS CONCERNING PERSONS WITH DISABILITIES ON THE BASIS OF THE CHARTER

DA) SOCIAL SECURITY

Article 34 (1) of the Charter stipulates that the European Union – in accordance with the rules laid down by Union law and national laws and practices – recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment. In my view the terms “illness” and “dependency” have the closest connection with disability out of the life situations referred to in the provision. Pursuant to *Article 34 (3) of the Charter* “In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources [...]”. It is clear that this paragraph is of great importance from the aspect of persons with disabilities as well. This idea is also *conveyed by the European Disability Strategy* when stating that lower participation in general education and in the labour market may lead to poverty for people with disabilities, as well as to social exclusion and isolation. Thus *they must be enabled “[...] to benefit from social protection systems and poverty reduction programmes, disability-related assistance, public housing programmes and other enabling services, and retirement and benefit programmes.”*

The title of Article 34 of the Charter also indicates that when drafting the article, the Convent thoroughly relied on the relevant provisions of the ESC and under their influence separated the right to social security and the right to social assistance. In respect of the right to social security, Article 12 of the ESC contains the right to social security, for the ensuring of which the State Parties undertake to establish and maintain a system of social security. The right to social and medical assistance is laid down in Article 13 of the ESC.

Thus, considering the prohibition of discrimination on the ground of disability and the principle of equal opportunities, it is the *task of the Member States* to facilitate – according to the potential of their economies – the improvement of the social and economic conditions of disabled persons and their integration into the life of the community. *By realising complex rehabilitation – one area of which is social rehabilitation – the Member States can facilitate that persons with disabilities can exercise their fundamental rights on an equal footing with others.* According to this, *Member States must launch programmes aiming at promoting social protection, the reduction of poverty and access to housing, further they must ensure access to services and equipment connected to disability.* Member States must ensure that their nationals who are without adequate resources and who are unable to secure such resources either by their own efforts or from other sources – including benefits under a social security scheme – be granted *adequate assistance and support.* *The establishment of a social welfare system also compensating for the disadvantages arising from disability is the institutional protection obligation of Member States.*

DB) HEALTH PROTECTION

Under the *European Disability Strategy* persons with disabilities “[...] may have limited access to health services, including routine medical treatments, leading to health inequalities unrelated to their disabilities.” Persons with disabilities are *entitled to equal access to healthcare, including preventive healthcare, and specific affordable quality health and rehabilitation services*. Regulation pertaining to health protection is laid down in *Article 35 of the Charter*. Accordingly, everyone – including persons with disabilities – has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. “A high level of human health protection shall be ensured in the definition and implementation of all the Union’s policies and activities.” In compliance with this, the Commission supports *activities under the policy for equal access to healthcare*.

It should be highlighted that, despite Union support, organising and delivering health services and medical care are mainly the task of the Member States. Within the scope of this task, *Member States must endeavour to identify and eliminate accessibility barriers and obstacles to creating good physical and mental health in respect of persons with disabilities*. Consequently, the Member States *must ensure accessible, non-discriminatory services* taking into consideration that *not only medical treatment in a narrow sense should be made accessible to persons with disabilities*. In order to promote access to high quality and efficient services, the Member States *must ensure the special training and further training of persons taking care of persons with disabilities*.

V. CONCLUSIONS

1. The European Union and its Member States *should promote* the enforcement of the rights of people with disabilities in their external relations as well, including EU enlargement. The EU will *support and complement* national initiatives to address disability issues. Within this framework the Commission aims to ensure that candidate countries make progress in promoting the rights of people with disabilities and ensure that the financial instruments for pre-accession assistance are used to improve their situation.

2. Due to multi-level constitutional regulation, the present and future Member States of the EU must meet multi-fold requirements demanding efficient enforcement of rights on the part of the states concerned. *States must enable persons with disabilities to actually exercise their existing fundamental rights which are equal with those of other members of the society*. Obviously, states are at various stages in the process of implementation, which affects the determination of their current tasks in the area of addressing disability. Nevertheless, taking also into consideration the international and European context, it is *possible to identify the main state obligations*, the fulfilment and quality improvement of which must sooner or later be initiated and accomplished by all present and future Member States. These include especially

- eliminating discrimination on the ground of disability;
- ensuring access to goods and services for persons with disabilities including public services and assistive devices;
- ensuring access to education, facilitating inclusive education and life-long learning for students and learners with disabilities;
- facilitating access to employment;

- enabling access to transport, infrastructure and public buildings;
- ensuring appropriate living standards for persons with disabilities;
- rendering quality community-based services including the possibility of individual assistance;
- promoting equal access to health and related services for persons with disabilities;
- guaranteeing voting rights, improving political participation, ensuring that all persons concerned can fully enjoy the benefits of Union citizenship;
- ensuring full legal capacity, eliminating administrative and behavioural barriers to full and equal participation;
- providing help in enforcing rights.

3. The fulfilment of the obligations of the Member States stemming from multi-level cooperation fosters the elimination of physical, social and cultural barriers to the full participation of persons with disabilities in the life of the society. This may gradually lead to a situation where persons with disabilities can fully enjoy their fundamental rights. Obviously, this needs several kinds of “investment”:

- a shift in the approach of political decision-makers;
- the adoption, implementation, monitoring, assessment and improvement of the disability strategy;
- social awareness-raising concerning the “inclusion” of persons with disabilities;
- financial means should be assigned by the law-making state to achieve the aim;
- the situation of persons with disabilities should be monitored.

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Dr. sc. Nikolett Hadi, Pravni fakultet Sveučilišta u Peču

PRAVA OSOBA S INVALIDITETOM U EU I IMPLIKACIJE ZA DRŽAVE ČLANICE

Sažetak

Pitanje prava osoba s invaliditetom EU smatra pitanjima ljudskih prava. Ublažavanje nedostataka koji proizlaze iz invaliditeta je pravno pitanje i ono ne može biti isključivo prepušteno slobodi odlučivanja država članica. Nacionalni propisi država članica koji se odnose na osobe s invaliditetom moraju biti u skladu sa zahtjevima međunarodnih i nadnacionalnih propisa. Zakon o invalidnosti bi se trebao tumačiti u okviru sustava višestrukih stupova. Rad istražuje odredbe Povelje o temeljnim pravima Europske unije koje se odnose na invalidnost i analizira učinke (značenje, sadržaj) Konvencije o pravima osoba s invaliditetom. U tom kontekstu su posebno važni sljedeći aspekti: nastojanje da Povelja postane dijelom primarnog zakonodavstva EU, pristupanje EU Zaštiti ljudskih prava i temeljnih sloboda, temeljni stupovi EU uredbi koje se odnose na osobe s invaliditetom.

Ključne riječi: osobe s invaliditetom, prava osoba s invaliditetom, izdvajanje, uključivanje, Povelja o temeljnim pravima, obaveze država članica

Dr. Nikolett Hadi, Fakultät für Rechtswissenschaften der Universität Pécs

BEHINDERTENRECHTE IN DER EU UND DIE IMPLIKATIONEN FÜR DIE MITGLIEDSTAATEN

Zusammenfassung

Die Europäische Union betrachtet die Frage der behinderten Personen als die Menschenrechtsfrage. Daraus folgt, dass die Linderung der aus den Behinderungen hervorgehenden Nachteile eine Rechtsfrage darstellt, die nicht ausschließlich dem Zuständigkeitsbereich der Mitgliedstaaten überlassen werden kann. Die einheimischen Regelungen in den Mitgliedstaaten bezüglich der behinderten Personen müssen auch mit den Voraussetzungen der internationalen und supranationalen Regelungen in Einklang stehen. Das Gesetz über die Rechte von Menschen mit Behinderungen sollte im Rahmen eines Mehssäulensystems ausgelegt werden. Diese Arbeit erforscht die Bestimmungen der Europäischen Konvention zum Schutz der Menschenrechte und Grundfreiheiten, die sich auf die Behinderten beziehen und analysiert die Einwirkung der Konvention auf die Rechte der Menschen mit Behinderungen. In diesem Zusammenhang sind folgende Aspekte besonders wichtig: die Menschenrechtskonvention als Teil der primären EU-Gesetzgebung, der Ansatz der EU zum Schutz der Menschenrechte und Grundfreiheiten sowie die grundlegenden Säulen der EU-Regulative in Bezug auf die behinderten Personen.

Schlüsselwörter: behinderte Personen, Behindertenrechte, die Exklusion, die Inklusion, Europäische Konvention zum Schutz der Menschenrechte und Grundfreiheiten, Pflichte der Mitgliedstaaten