



Observatório da Deficiência
e Direitos Humanos
Disability and Human Rights Observatory

**Implementation of the
Convention on the Rights of Persons with Disabilities
in Portugal**

**Submission to the Committee on the Rights of Persons with
Disabilities of the Responses to the List of Issues**

by

the Disability and Human Rights Observatory

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Introduction

This submission was prepared by the Disability and Human Rights Observatory (ODDH)¹ in partnership with Disabled People's Organisations, members of its Advisory Board* - **representing altogether 182 Disabled People's Organisations** - and seeks to provide the civil society response to the List of Issues issued by the Committee on the Rights of Persons with Disabilities to the Portuguese State. In addition, the report presents recommendations for the Committee's consideration.

The Disability and Human Rights Observatory, hosted by the School for Social and Political Sciences / University of Lisbon, is an independent organism that brings together researchers and disability organizations and aims to assess the implementation of disability policies, in Portugal, and in the Portuguese speaking countries, promoting participatory monitoring initiatives and the full development of the human rights of persons with disabilities.

* **Members of the Advisory Board of the *Disability and Human Rights Observatory*:**

1. Associação de Beneficência Popular de Gouveia (ABPG)
2. Associação dos Deficientes das Forças Armadas (ADFA)
3. Associação Nacional dos Deficientes Sinistrados no Trabalho (ANDST)
4. Associação NOVAMENTE
5. Associação Portuguesa de Deficientes (APD)
6. Associação Portuguesa de Hemofilia e de Outras Coagulopatias Congénitas (APH)
7. Associação de Saúde Mental do Algarve (ASMAL)
8. Cooperativa Nacional de Apoio a Deficientes (CNAD)
9. Federação das Associações Portuguesas de Paralisia Cerebral (FAPPC)²
10. Federação Nacional de Cooperativas de Solidariedade Social (FENACERCI)³
11. Federação Portuguesa das Associações de Surdos (FPAS)⁴
12. Federação Portuguesa de Autismo (FPDA)⁵
13. Federação Portuguesa de Centros de Formação Profissional e Emprego de Pessoas com Deficiência (FORMEM)⁶
14. Fundação LIGA
15. Fundação Irene Rolo
16. HUMANITAS (Federação Portuguesa para a Deficiência Mental)⁷
17. PAIS-EM-REDE

¹ <http://oddh.iscsp.utl.pt/index.php/en/>

² 19 affiliates

³ 53 affiliates

⁴ 10 affiliates

⁵ 12 affiliates

⁶ 43 affiliates

⁷ 34 affiliates

Response to the List of Issues

A. Purpose and General Obligations (arts. 1 to 4)

General obligations (art. 4)

1. *Please provide updated information on specific measures being taken by the State party to revise and harmonize the current legislation (in particular the Constitution, the Civil Code and the Penal Code), in accordance with the provisions contained in the Convention on the Rights of Persons with Disabilities.*

1.1. Despite the guarantees contained in the Portuguese Constitution regarding the rights of citizens with physical or ‘mental’ disabilities (Art. 71), **the Portuguese law still includes provisions contrary to the standards of the Convention on the Rights of Persons with Disabilities.** One of the most significant areas in which this occurs is in relation to **legal capacity**, which can be limited or suppressed by the existing systems of full⁸ and partial⁹ guardianship. Although a proposal for revision of the Civil Code, and specifically to modify the systems of full and partial guardianship (*‘regime de interdição e inabilitação’*) is being considered (through the Resolution of the Council of Ministers 63/2015 and Draft Bill 61/XIII) no alteration to the Civil Code was done so far. For additional information about this issue, please see answer to questions on article 12.

1.2. There is no knowledge about the intention to revise and harmonize the Constitution or the Penal Code in accordance with the provisions contained in the Convention.

2. *Please provide updated information on concrete results obtained by the implementation of the National Strategy on Disability (ENDEF) 2011-2013, as well as new measures and budgets adopted by the State Party after its completion.*

2.1. According to the official report, the percentage of implementation of the ENDEF measures was: 73,68%, in 2011, 68,75%, in 2012, and 77,55%, in 2013, due to “the financial crisis and the austerity measures that the government had to put in place during this period” (INR, 2014). Moreover, in the view of the Disabled People’s Organisations, neither the ENDEF nor the ENDEF II (not yet adopted), constitute a real strategy for disability, as both documents are only a set of piecemeal, unconnected and limited in scope measures, which are not quantified nor budgeted.

2.2. Although the ‘ENDEF II Commission’ was created (Order 15432/2012) to develop and submit a proposal for the National Strategy on Disability 2014-2020 (the target date for submission of the proposal was planned for October 2013) **so far, ENDEF II has not yet been adopted.**

⁸ The full guardianship system (*‘regime de interdição’*) implies a severe containment in the exercise of rights. The Court assigns the status of interdiction on the basis of a legal request (by a parent, the spouse, a child, the curator or the public attorney). According to the law, persons with ‘mental anomalies, deaf-muteness and blindness, who show inability to govern their lives’ can be assigned the status of interdiction. Regardless of age, persons who are subjected to this regime remain in the status of minors, and for instance they cannot exercise the right to vote. If interdiction is ascribed on the basis of a ‘mental anomaly’ they are also prevented from exercising paternity and testifying in court, and although they can marry, the marriage can be declared null.

⁹ The partial guardianship system (*‘regime de inabilitação’*) is also assigned by a Court and implies the suppression of the right to manage one’s own property.

2.3. Through the information provided, in particular through the state annual budget, it is not possible to know the amount of public expenditure allocated to the area of disability.

3. *Please inform the Committee on measures taken to increase the degree of involvement of persons with disabilities and their representative organizations in processes of implementation, follow-up and assessment of the Convention, as well as regarding their active participation process in the drafting of the Initial Report of the State party.*

3.1. **No information is available regarding the measures taken to increase the degree of involvement of persons with disabilities and their representative organizations in the processes of implementation, follow-up and assessment of the Convention.** However, the feedback provided by disability organisations suggests that often the INR (the government body in charge of coordinating disability policy at national level) does not take into consideration their concerns regarding these matters, possibly due to lack of legislative autonomy.

3.2. Disability organisations and other stakeholders were consulted during the process of drafting the official Portuguese report to the CRPD Committee notably through participation in a consultation meeting.

4. *What has been the impact of austerity measures on the funding and support of organisations of persons with disabilities in Portugal, and related consequences to the latter's fulfilling of their role in the development and implementation of legislation and policies and participation in decision making?*

4.1. **From 2009 onwards, disability organisations in Portugal, and particularly those which provide specific services have had to deal with continuous and unexpected legal changes that constrained the access to funding and support provided,** as a report from a study conducted in 2012 on the impact of the austerity plan on the rights of persons with disabilities in Portugal highlighted (Pinto & Teixeira, 2012). For instance, between 2009 and 2011, the public expenditure with professional training for disabled persons, which is mainly offered by organisations of persons with disabilities, was reduced in 62%, without having had a significant investment in inclusive training. The general lack of funds available to disability organisations has seriously compromised their ability to provide information regarding the social and economic rights of disabled people, to advice their members, or even advocate for their rights (Pinto & Teixeira, 2012).

4.2. Due to the economic crises and consequent lack of financial resources important measures planned in the National Strategy on Disability (ENDEF I) were not materialized (INR, 2014). This was the case, for instance, **of the introduction of a pilot project on Personal Assistance (a scheme to this date inexistent in Portugal). This seriously compromises the opportunities to achieve independent living of disabled people in Portugal** (Pinto & Teixeira, 2012).

4.3. In 2011, with the aim to rationalize economic resources, the Portuguese government put a closure on the National Council for the Rehabilitation and Integration of Persons with Disabilities (CNRIPD) and, simultaneously, created the National Council for the Politics of Solidarity, Voluntary, Family, Rehabilitation and Social Security (CNPS) (Decree-Law 126/2011). This Council, for its excessive size to have a fully functioning, has nevertheless not come out of paper¹⁰. To fill in this void, the government designated 3 DPOs and created

¹⁰ <http://www.publico.pt/sociedade/noticia/governo-cria-superconselho-consultivo-para-areas-da-familia-e-seguranca-social-1632410>

an ad-hoc group – the Disability Commission (constituted by Associação Portuguesa de Deficientes, ACAPO e HUMANITAS) – as a temporary mechanism of consultation with the disability movement. However, in September 2015, one of the DPOs member of this Commission (Associação Portuguesa de Deficientes) resigned from the group, denouncing that “policies had been adopted without the previous consultation of the group, policies that in most cases did not improve the lives of persons with disabilities, besides being exceeded the reasonable time to start the operation of the CNPS” (APD, 2015).¹¹”

Recommendations

4.4. Review and adapt the Portuguese legislation according to the principles of the Convention.

4.5. Make public the annual budget for the disability field.

4.6. The State should move forward with the reform of the Civil Code compatible with article 12 of the Convention, as well as a monitoring scheme for people with disabilities in need of assistance.

4.7. The State should move forward and propose the new legal status for people with disabilities to strengthen and complete with the norms of the Convention, as well as updating the constitutional protection of the rights foreseen in the Convention in accordance with the article 71 of the Constitution and the article 74, n.º 2, point h) to assure the effective protection of the Portuguese Sign Language as a language in its own right, in accordance with the article 21 of the Convention.

4.8. It is urgent for Portugal to have a coherent national policy in the disability field. A National Strategy on Disability cannot be just a sum of measures, many of which are not innovative – as was the case of ENDEF I – and even so without full implementation.

4.9. A National Strategy on Disability should focus on a set of achievable goals, properly scheduled, quantified and budgeted and it is essential to have greater transparency and accountability in the implementation process.

4.10. To ensure that the policy defined in the disability field has appropriate budgetary conditions to be enforced (avoiding the problems occurred with ENDEF I) and using the Structural Funds available until 2020 for the development of policies which contribute for the implementation of the Convention at a national level.

4.11. To create specific mechanisms to allow an active participation of people with disabilities and their organisations in political processes and monitoring of rights of people with disabilities and take into consideration the contributions of the Disabled People’s Organisations when discussing and deciding a national policy in the disability field.

B. Specific Rights

Equality and non-discrimination (art. 5)

5. *Please provide information on measures being taken by the State Party to protect persons with disabilities against multi-dimensional discrimination, especially on the grounds of age, sex and ethnic origin. What enforcement measures and sanctions are in place to ensure application of prohibition of disability-based discrimination and what legal redress is available?*

¹¹ “APD abandona comissão para a deficiência” - APD Official Statement (28-09-2015)

5.1. Despite the Law in place that prohibits and punishes discrimination on the basis of disability (Law 46/2006), **multi-dimensional discrimination on the grounds of age, sex and ethnic origin is not formally recognized in the Portuguese legislation.**

5.2. Although the National Strategy on Disability (2011-2013) had a strategic goal called “Disability and Multiple Discrimination”, **the measures concerned were composed only of awareness raising actions and training actions for customer service officials. This is clearly insufficient.**

5.3. Under the Anti-discrimination law (Law 46/2006, regulated by Decree-Law 34/2007), the persons and organisations can present complaints denouncing situations of discrimination (see table below). However, the burden of proof is on the complainant and, in the vast majority of cases, the complaints have been closed and no sanctions were applied.

| Complaints (under Law 46/2006) | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|---------------------------------------|------------|-----------|-----------|-----------|-----------|------------|------------|------------|
| National Institute for Rehabilitation | 37 | 13 | 6 | 8 | 7 | 17 | 16 | 16 |
| Other public entities | 74 | 56 | 39 | 60 | 42 | 74 | 77 | 72 |
| Ombudsman | 8 | 5 | 2 | 0 | 5 | 40 | 273 | 265 |
| TOTAL | 119 | 74 | 47 | 68 | 54 | 131 | 366 | 353 |

Source: INR annual reports on the enforcement of Law 46/2006: INR (2007-2014)

5.4. The annual reports on the implementation of Law 46/2006 (INR, 2009-2014) - since 2009 until 2014 – all refer in the conclusions: (1) “Absence of information about any legal action taken based on discrimination” and (2) “There is a difficulty in the concrete definition of discrimination on the grounds of disability or aggravated health risk, as well as their proof, which continues to generate the non-instruction of procedures of administrative offenses”. This is due to the lack of regulation of Law 46/2006, in specific areas.

5.5. The only case publicly known about the enforcement of non-discrimination law goes back to 2011: the Court forced the installation of a stair lift, at the railing of the stairs of a building in Lisbon, to facilitate access to his home to a man with reduced mobility living in the 3rd floor of a building without elevator (the remaining owners opposed the installation of the stair lift) (Público, May 18, 2011). The court judgement was based on Law 46/2006.

5.6. In practice, there is a widespread lack of knowledge among persons with disabilities and their organizations about their rights that needs to be urgently addressed.

6. Please indicate how denial of reasonable accommodation is considered a specific form of discrimination in the legislation of the State Party.

6.1. **The denial of reasonable accommodation is not considered a form of discrimination in national legislation; the Labour Code suggests that employers should provide reasonable accommodation, but is not mandatory about that** (Labour Code, article 84 of Law 46/2006 and Decree-law 290/2009).

6.2. In tertiary education, there is an absence of legislation requiring the provision of reasonable accommodation and support services for students with disabilities. Some universities in Portugal have already developed guidelines for teachers and non-teaching staff, or have created support offices for students with reduced mobility and/or provided accessible materials and equipment (GTAEDDES, 2014); others, however, have not made

available any kind of support, which creates disparities among students and compromises their educational success.

Recommendations

6.3. To address the issue of multiple discrimination faced by people with disabilities in the Portuguese legislation and ensure the effective mechanisms of protection against multiple discrimination.

6.4. Add to article 13 (Principle of Equality), of the Portuguese Constitution, the prohibition of discrimination on the grounds of disability, as has been required by the Disabled People's Organisations.

6.5. Change article 84 of the Labour Code related to workers with disabilities, in order to make reasonable accommodation mandatory.

6.6. Regulate Law 46/2006 to overcome the difficulties "in the concrete definition of discrimination on the grounds of disability" which hamper the implementation of the law.

6.7. Create a legal framework for the provision of supports to students with disabilities in higher education and remove physical, information and communication barriers in universities, in accordance with existing legislation.

Women with disabilities (art. 6)

7. Please provide updated information on mainstreaming women and girls with disabilities in the implementation of the IV National Plan for Gender Equality, Citizenship and Non-Discrimination 2011-2013, as well as new measures and budget planned in the V National Plan for Gender Equality, Citizenship and Non-Discrimination 2014-2017 in relation to women and girls with disabilities. Please provide further information on protecting women and girls with disabilities from violence, abuse and exploitation.

7.1. The Portuguese legal and policy framework does not formally acknowledge the risk of multiple discrimination facing women and girls with disabilities (ODDH, 2015).

7.2. In Portugal, research showed that girls and women with disabilities are more exposed to gender-based violence than boys and men with disabilities (Pinto et al., 2014a): in a recent study, of the 31 women interviewed, 16 reported at least one instance of physical, verbal, psychological, sexual or economic violence or abuse (the incidence in the male group was only 6 in 29). However there is a lack of attention to this phenomenon at the public and policy level, which contributes to the silencing of this reality, thus facilitating its perpetuation (ODDH, 2015).

7.3. The National Plans for Gender Equality, Citizenship and Non-discrimination (2011-2013 and 2014-2017) do not adequately reflect the specific needs of girls and women with disabilities: both include only one measure aimed at awareness-raising actions (CIG, 2011; CIG, 2013a). Furthermore, disabled people's organisations were not involved nor consulted in the preparation and design process of the mentioned plans.

7.4. The National Plans against Domestic Violence (2011-2013 and 2014-2017) recognise that girls and women with disabilities are a particularly vulnerable group (measure 23 and measures 28 and 42, respectively), however, in practice, specific measures to protect girls and women with disabilities from situations of domestic violence were not implemented (CIG, 2010; CIG, 2013b).

8. *Women and girls with disabilities reportedly have lower levels of education, less access to employment and lower access to social support and rehabilitation services. Please indicate what strategies have been adopted to address these problems.*

8.1. **As far as we know there are no strategies to address the problem of the lower levels of education, less employment and lower access to social support and rehabilitation services faced by women and girls with disabilities.**

Recommendations

8.2. Develop specific law and policy to address the multiple discrimination faced by girls and women with disabilities.

8.3. Ensure that people with disabilities and their organisations are represented in the development and implementation of the National Plan for Gender Equality, Citizenship and Non-discrimination and the National Plan against Domestic Violence.

8.4. Take into account the disability perspective in the National Plan for Gender Equality, Citizenship and Non-discrimination and the National Plan against Domestic Violence, as existing measures are scarce and insufficient.

8.5. Strengthen research and intervention in order to combat violence against persons with disabilities, namely domestic violence against women and girls with disabilities.

Children with disabilities (art. 7)

9. ***Please explain the measures being taken by the State Party to avoid institutionalisation and educational segregation of boys and girls with disabilities. Please also indicate actions being implemented to protect children with disabilities from abuse and neglect.***

9.1. **As far as we know there are no specific measures being taken in Portugal to avoid the institutionalisation of children with disabilities.**

9.2. **In Portugal, approximately one in five children who are institutionalized, due to being exposed to situations of risk in their families, has a disability:** Social Security data show that, in 2014, 21.2% from all children in social care institutions (total of 8,470) had some type of disability: 14.1% with ‘mental’ disabilities, 4.4% psychosocial disabilities (‘mental illness’) and 2.7% with physical disabilities (ISS, 2015).

9.3. Decree-law 3/2008 (modified by Law 21/2008) promoted the inclusion of almost all students with disabilities in regular schools. **However, the implementation of this law has been hampered by lack of human and material resources** (see Pinto & Teixeira, 2012; Pinto et al., 2014b; CNE, 2014a) **thus compromising a quality inclusion education for all students with disabilities** (see more information in answers to Article 24).

9.4. Furthermore, Decree-law 3/2008 also established the so-called ‘**reference schools for deaf and/or blind or low vision students and students with autism**’. These reference schools are public mainstream schools which concentrate human and technical resources for the students to learn Braille or Sign Language. **In practical terms this creates a new form of segregation as it means that deaf and/or blind or low vision students and students with autism may need to travel long distances, or even change city of residence, to attend the reference school**, which may impact their ability to participate in the life of their communities and their families (Pinto et al., 2014b; ODDH, 2015).

9.5. **The prohibition of discrimination against children with disabilities in private kindergartens and nurseries is not specifically legislated.**

9.6. The National Strategy on Disability (2011-2013) did not contain specific measures to prevent and combat violence against children with disabilities. **A recent study (FRA, 2015) calls attention of the urgent need to create specific legislation to protect children with disabilities from violence and abuse.**

9.7. Children and young adults with disabilities in mainstream schools are particularly vulnerable to segregation and discrimination by their school colleagues (Pinto et al., 2014a). The persistence of labelling and negative stereotypes related to disability lead to disrespectful relations between disabled and non-disabled students (Pinto et al., 2014b). Despite the fact that Portugal has ratified the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, the practical implementation of many of the rights and principles recognized in this legal framework which emphasizes the right to inclusion, participation and non-discrimination of children and young adults with disabilities has been found to be problematic and no adequate measures are being taken to address these issues (Pinto et al., 2014a).

Recommendations

9.8. To introduce specific legislation to protect children and young people with disabilities from violence, abuse and prevent their institutionalization.

9.9. To modify Decree-Law 3/2008, in consultation with disabled people's organisations, and provide public schools with the adequate means to ensure the inclusion of all students with disabilities in regular classrooms.

9.10. To raise awareness and educate students without disabilities, parents and school communities about disability issues to eliminate prejudice and stereotypes.

9.11. To introduce human rights and disability contents in the curricula of students in primary and secondary education.

Accessibility (art. 9)

10. Please indicate the control mechanisms that have been established to ensure the implementation of the accessibility requirements set by the National Plan for the Promotion of Accessibility (PNPA). Likewise, please explain the legislation and the measures being implemented by the State Party to ensure accessibility to the physical environment, transportation, information and communication, including emergency services. Furthermore, please indicate whether there are any sanctions for non-compliance with accessibility measures in place?

10.1. In Portugal, the legislation in the area of accessibility is abundant (e.g. Decree-Law 163/2006; National Plan for the Promotion of Accessibility, approved by Resolution of the Council of Ministers 9/2007), however its implementation has been particularly problematic due to:

10.1.1. Scarce and ineffective supervision in the implementation of the Accessibility Law (Decree-Law 163/2006) since municipalities are, simultaneously, the licensing body and the supervisor of compliance with the Accessibility Law. This creates inefficiency in the implementation of the law. It is important, in the future, to separate these two entities (licensing and supervisor). Furthermore, the Accessibility Law has been, since 2012, under review, however, to date this process has not been completed. Similarly, the National Plan for Promotion of Accessibility (INR, 2007) was supposed to have two phases: the first from 2007 to 2010 and the second between 2011 and 2015. However, the second phase of the plan (2011-2015) never started.

10.1.2. Recent legislation on urban regeneration (Decree-Law 53/2014) which provides for exemption from compliance with accessibility standards (Decree-Law 163/2006). In this way, all regeneration works carried out in old buildings are not required to meet accessibility standards.

10.1.3. Even if non-discrimination law (Law 36/2006) foresees complaints related to accessibility, as mentioned in the response to Article 5, the majority of discrimination-related complaints are currently archived: from the overall number of complaints received in 2014 (N=353), 59% (N=207) ended up being archived. In 2014 as well, only 47 complaints, or 14% of the total, concerned accessibility issues. Among these, 27 that is 57% of all accessibility-related complaints, concerned lack of accessibility to the Institute of Registrations and Notary Affairs (IRN), a body that renders essential services such as the emission of identity cards, birth certificates, among others. These complaints did not lead to any sanctions. This data suggests that even if citizens present complaints related to lack of accessibility to essential public services, these **complaints fail to lead to any practical outcomes, as no sanctions are applied and these services remain inaccessible.**

10.2. There is no knowledge of any application of sanctions for non-compliance with the law.

10.3. The available research shows (Pinto et al., 2014a) that the **lack of accessibility to transportation, communication and information systems, and the built environment is one of the main causes of the exclusion and denial of rights for persons with disabilities in Portugal.** Furthermore, the failure to implement Universal Design principles, and lack of training of human resources create difficulties and limitations on mobility and social participation of persons with disabilities in everyday life. **Lack of access to information is still the main problem as reported by persons with disabilities especially deaf and blind people and people with low vision** (Pinto et al., 2014a). Similarly, the unavailability of **Easy to Read information and lack of information in public areas to facilitate mobility** are also barriers that create exclusion for people with intellectual and neurocognitive disabilities.

Recommendations

10.4. To enforce the implementation of the existing Accessibility Law (Decree-law 163/2006) and adopt new editions of the National Plan to Promote Accessibility II (PNPA II).

10.5. To review the Accessibility Law (Decree-law 163/2006) in order to separate the licensing body from the supervisory.

10.6. To modify Decree-Law 53/2014, in order to apply the existing norms of accessibility to urban regeneration.

10.7. To adopt legislation concerning accessibility to all transportation systems (including public and private, urban and rural, metropolitan, regional and interregional) and to enforce existing accessibility norms applicable to transportation infrastructure (railway stations, stations and bus stops, river or maritime wharves, airports, etc.) taking into account all types of disabilities, including people with neurocognitive deficits.

10.8. To include the topic of accessibility and universal design in the initial training programmes of engineers, architects and urban planners.

Equal recognition before the law (art. 12)

11. Please indicate when the State Party is planning to modify its current legislation in relation to guardianship, as well as the measures it intends to take to replace the substituted decision-making regime by safeguards and supported decision-making systems, particularly with respect to services for persons with intellectual and psychosocial disabilities.

11.1. **The Portuguese legislation still contradicts the Convention with regards to the recognition of legal capacity, in particular in relation to persons with intellectual, psychosocial and sensorial impairments – who once they are placed under the system of full or partial guardianship - continue to be prevented from exercising certain rights such as to vote, to marry, to raise a family or manage assets and property.** This situation seriously compromise their autonomy and decision-making. This limitation of rights has been considered as "constitutionally doubtful" by experts from the legal field (CEJ, 2015, p.28).

11.2. The need to proceed to amendments to the Civil Code has been recently acknowledged (Council of Ministers Resolution 63/2015), particularly in regards to full and partial guardianship systems (Articles 138 to 156) and the limitation of the above mentioned rights. Nonetheless, the revision of this legislation is still under discussion and, in practice, no amendments have been introduced. It is important to mention, however, that the text of the proposal, which is already known (Draft Bill 61/XIII), still lags behind what is established in the Convention.

11.3. **People who are institutionalised in psychiatric institutions are also unable to exercise their voting rights in accordance with the Electoral Law** (Law 14/79, Decree-law 319-A/76 and Organic Law 1/2001).

Recommendations

11.4. To change the Portuguese legal framework in order to enable the equal recognition before the law of all persons with disabilities, as stipulated on article 12 of the CRPD and General Comment 1.

11.5. To abolish the existing systems of full and partial guardianship which take away legal capacity and to develop systems of supported decision-making that allow and promote the effective exercise of rights, in accordance with the spirit of the CRPD and General Comment 1.

11.6. To raise awareness in families and throughout society about this issue.

Liberty and security of the person (art. 14)

12. *Please specify when the State Party is planning to repeal provisions in its current legislation in relation to the internment of “persons with mental disabilities” ‘as the only means of ensuring an efficient treatment or as a security measure’ and to harmonize it with the Convention. Please also indicate the measures being taken to strengthen community-based support services for persons with disabilities, including with intellectual and/or psychosocial disabilities.*

12.1. **According to the Mental Health Law (Law 36/1998 and Law 101/1999) “persons with mental disabilities” may be subject to compulsory internment when it is believed that it is the only way to ensure that the patient is submitted to treatment or as a security measure proportional to the legal value at question** (ODDH, 2015).

12.2. **There is no information available about when the State Party is planning to repeal such provisions in its current legislation and harmonize it with the Convention.**

12.3. Although there is legislation providing for the development of support services in the community for people with intellectual and/or psychosocial disabilities (the National Programme of Mental Health 2007-2016 intended to expand the National Network of Integrated Continuous Care for Mental Health: Decree-law 8/2010 and Ordinance 149/2011) recent research shows that **this legislation is not being enforced and support services in the community have not been created** (Almeida et al., 2015), which compromises the opportunity of people with intellectual and / or psychosocial disabilities to live independent lives. For further discussion of this topic see answers related to Article 19.

12.4. Currently people with brain injury and other neurocognitive deficits are not being considered for mental health services. Thus, for instance, their access to psychosocial rehabilitation programs is often rejected, on the grounds of their "non eligibility". This may generate situations of extreme social exclusion for these persons.

Recommendations

12.5. To review mental health legislation in order to eliminate the possibility of compulsory internment

12.6. To allocate public funds for the development of psychosocial rehabilitation supports in the community

12.7. To extend the eligibility criteria to the community-based psychosocial rehabilitation programs to people with neurological disabilities.

Freedom from torture or cruel, inhuman or degrading treatment or punishment (art.15)

13. Please provide information about mechanisms to prevent torture and other cruel, inhuman or degrading treatment or punishment of persons with disabilities, including of those accommodated in institutions.

13.1. There is sufficient legislation protecting people against torture and cruel, inhumane or degrading punishments, including persons with disabilities (Constitution, Article 25, 71; Penal Code, Article 143, 152; Code of Execution of Freedom-Depriving Sentences and Measures), but there is no knowledge of monitoring studies that assessed whether such measures are effectively protecting persons with disabilities, namely those living in institutions.

Freedom from violence and abuse (art. 16)

14. Please report about current measures to prevent violence against, as well as neglect and deprivation of food and medicine of persons with disabilities, in particular girls and women with disabilities, and to ensure their access to interventions and programmes for victims of gender violence.

14.1. There is no specific legislation to protect persons with disabilities against physical and psychological violence (Article 152 of the Penal Code). There isn't, either, specific legislation concerning the prevention of domestic violence against persons with disabilities (Law 112/2009).

14.1.1. Still, a recent study revealed high rates of violence and abuse of women with disabilities – 16 out of 31 women interviewed reported having been previously subjected to gender violence (Pinto et al., 2014a).

14.1.2. Moreover, field actions conducted by GNR (National Republican Guard) within the scope of a Program of Support to Persons with Disabilities, showed that between December 2014 and December 2015, 5.746 persons with disabilities were identified in Portugal without any form of support, of which around 3.500 were living alone (Público, December 4th 2015). Cases of severe food, hygiene and financial deprivation were also identified (RTP, July 1st 2015).

14.1.3. Through another program, the '*Significativo Azul*', the PSP (Public Security Police) also conducted actions on the field to identify situation of violence against persons with disabilities, particularly those with intellectual disabilities, and identified situations of mistreatment by family-members and care-takers, and sexual violence (RTP, July 1st 2015).

15. *Please provide detailed information on measures being implemented to avoid situations of abuse and trafficking of persons with disabilities, including persons with intellectual and/or psychosocial disabilities.*

15.1. There is legislation that criminalizes trafficking of persons and taking advantage of persons “with mental incapacity or particularly vulnerable” (article 160 of the Penal Code). However, the Observatory on Trafficking of Human Beings, whose mission is to produce, collect and disseminate information and knowledge about human trafficking **does not provide any information about trafficking of persons with disabilities.**

15.2. Likewise, the III National Plan to Prevent and Combat Trafficking of Human Beings (Resolution of the Council of Ministers 101/2013), does not mention any measure specifically concerning persons with disabilities.

15.3. The Service of Foreigners and Borders allows persons with disabilities, victims of sexual or other form of violence, with a residence permit issued under that legislation, to have access to necessary medical and social care (Law 23/2007).

Recommendations

15.4. To include the disability perspective in the plans and legislation to combat violence and abuse as well as trafficking of persons with disabilities.

15.5. Collect specific data on the incidence of domestic violence among women with disabilities in order to allow proper monitoring and to develop specific measures to prevent this problem.

15.6. Educate girls and women with disabilities about sexual and other forms of abuse and violence and develop actions to empower them.

Protecting the integrity of the person (art 17)

16. *Please report about specific measures adopted by the State Party to prohibit and prevent persons with disabilities, especially those who have been declared legally incapacitated, from being subjected to processes of termination of pregnancy, sterilization, scientific research, electroconvulsive therapy or psychosurgical interventions against their will, and to prohibit substituted decision-making in this regard.*

16.1. **Even though Portugal has sufficient legislation concerning the protection of individual integrity, namely in the scope of medical and surgical treatments (e.g. Law 36/98, Norm 15/2013), other legislation foresees exceptions, namely concerning persons who are deemed ‘psychologically incapable’. As a consequence, these persons may be subjected to terminations of pregnancy, requiring only written consent by a legal representative or family member (Law 16/2007).**

16.2. **Similarly, the sterilization of adults with disabilities may be conducted following judicial authorization (ERS, 2009).** While there is no official data available concerning the sterilization of adults with disabilities, according to the disability organisations working in the field of intellectual disability, many family members still resort to forced sterilization of adults with disabilities.

16.3. People may accept or refuse proposed therapies and interventions, namely electroconvulsive therapy or psychosurgical interventions, **except in cases of compulsory in-patient care or emergency situations where lack of intervention might pose harm to the person or to a third party** (Law 36/98, amended by Law 101/99).

Recommendations

16.4. To develop systems of supported decision-making that allows the protection of the rights of persons with disabilities.

16.5. To develop legislation to criminalize the use of forced sterilization in women with disabilities

16.6. To eliminate from the Portuguese legislation the possibility of compulsory internment.

Living independently and being included in the community (art. 19)

17. Please indicate measures being taken by the State party to invest in and supply community based social services which facilitate independent living and to adopt a national deinstitutionalization plan with time bound targets and define indicators through close consultation with and participation of organizations of persons with disabilities. Please inform on the measures carried out to facilitate access to personal assistance.

17.1. The right to live independently and being included in the community is still seriously compromised, in Portugal, for the reasons mentioned below:

17.1.1. Absence, in the Portuguese legal framework of the professional role of personal assistant. The implementation of a pilot project of personal assistance was foreseen in the National Disability Strategy (2011-2013) however this measure was never put into practice.

17.1.1.1. Currently, the Portuguese State pays approximately €950/per user, directly to service providers that run residential homes (see Protocol between MSSS, UMP and CNIS 2013-2014). **Yet, if a person with disabilities wishes to live alone and needs permanent support, he/she is only entitled to receive €88.37, the current amount of the ‘Third Person Assistance Allowance’.**

17.1.1.2. Due to lack of suitable alternatives, many adults with disabilities live in nursing homes for elderly people. Recently, the admission criteria of these nursing homes changed (Ordinance 67/2012), mainly due to the increasing demand for these services: rooms that would previously accommodate two persons may now hold three while individual rooms may now be turned into double rooms. Clients have lost their privacy and it is likely that the quality of care has diminished (Pinto & Teixeira, 2012). It becomes necessary to review this legislation, in order to provide the supports needed to ensure independent living to all persons with disabilities to allow them to choose where and with whom they want to live.

17.1.2. Lack of a national policy concerning independent living.

17.1.2.1. In Portugal, there is only one independent living pilot project, recently launched by the Lisbon City Council, involving 5 persons with disabilities, which will span for two years. This initiative is managed by the ‘Centre for Independent Living’ Association (Público, November 22nd 2015)

17.1.3. The deinstitutionalization process is compromised and the provision of community-based services for persons with psychosocial impairments is insufficient (Almeida et al., 2015; ERS, 2015). In Portugal, over the past few years, several psychiatric hospitals have been closed. However, the closure of psychiatric hospitals has not been

accompanied by the corresponding creation of alternative community-based support services (ERS, 2015, p. 75), which remain “clearly insufficient” while the number of community-based mental health teams is still “very restricted” (Almeida et al., 2015, p.58).

17.2. While an independent living policy is not established, at the national level, this legal and political void will contribute to perpetuate the dependency of persons with disabilities on their families, placing over them a significant personal, economic and social burden, and creating serious obstacles to the social and economic inclusion of persons with disabilities, as show various studies (Pinto, 2011; Portugal et al., 2010).

17.3. Furthermore, **the absence of Sign Language interpreters in public services** (they are only available in the courts, in the Regional Centres of the Institute of Social Security - ISS, IP; and the Employment and Professional Training Institute – IEFP, IP) has an especially severe impact on access to **hospital services and health centres**, imposing an important barrier to access healthcare (Pinto et al., 2014a).

Recommendations

17.4. To create a new legal framework to support independent living, to establish the professional role of Personal Assistant and implement a pilot project of Personal Assistance, as it was already foreseen in ENDEF I (the National Strategy on Disability), while providing for its progressive enlargement and including in this service the provision of Sign Language interpretation services.

17.5. To extend the supply of home care services (24h/day), adjusted to the reality of persons with disabilities.

17.6. To increase the provision of social care services for persons with disabilities, notably through the creation of group homes.

17.7. To provide Sign Language interpreters in more public services, and in particular in the health services.

Freedom of expression and opinion and access to information and communication (art. 21)

18. ***Please inform on the measures carried out to facilitate access to communication services, such as audio-description and sign language interpretation.***

18.1. In regard to accessibility to information and communication systems, there is a positive development with the approval, in 2014, by the Regulatory Authority for the Media (ERC) of the Multiannual Plan, from February 2014 until January 2017 (ERC, Resolution 4/2014), that foresees measures to ensure access of persons with disabilities to TV broadcasts, through subtitling, Portuguese Sign Language and audio description.

18.2. However, being a voluntarily established agreement among the main TV channels, there is no enforcement mechanism attached to it. The public television channels (RTP1 and RTP2) did not meet the minimum number of hours in relation to subtitles (ERC, 2014). Furthermore, in any of the three main channels the goals regarding the size and quality of the interpretation window have been achieved.

18.3. There is no legislation requiring public services to make available information in easy-to-read format, whether web-based or in customer assistance points (e.g. mandatory filling forms, official documents, political documents, among others), thereby failing to

take into consideration the needs of persons with intellectual and neurocognitive impairments.

Recommendations

18.4. To increase the requirements set on private television operators regarding the number of hours broadcasted in an accessible format and increase the number of hours of informative programmes broadcast in accessible format in the public channels.

18.5. To introduce disability issues in the initial training of the media professionals.

18.6. To review the Accessibility Law (Decree-law 163/2006) in order to include norms about access to information and communication systems for deaf persons and persons with neurocognitive impairments.

Respect for home and the family (art. 23)

19. Please provide detailed measures being adopted by the State Party to combat discrimination of persons with disabilities in all issues related to marriage, family, maternity or paternity and personal relations. Furthermore, please provide information on how the State Party guarantees the rights and obligations of persons with disabilities with regard to exercising parental rights, supervision and adoption of children.

19.1. According to the Civil Code it is not possible, for persons who are under the full guardianship system (*regime de interdição e inabilitação*) because of ‘psychic anomaly’, to get married (article 1601), exercise parental rights (article 1913) or adopt a child (article 1850). Although this legislation is under revision and discussion, in practice, no change has yet been made.

19.2. There are no public services or programs to support parents with disabilities in developing their parental responsibilities (for example, personal assistance).

Recommendations

19.3. To create services to support parents with disabilities in exercising their parental responsibilities.

19.4. To raise awareness in families of persons with disabilities about the right to marry, found a family, rights to maternity and paternity, rights to intimacy and personal relationships.

Education (art. 24)

20. Please indicate measures being taken to promote and invest in inclusive and quality education for all children and adults with disabilities, and measures to meet the objectives set out in the European Strategy 2020, specifying indicators to monitor the implementation of inclusive and quality education across all schools. Please also provide updated data on the number of persons with disabilities attending higher education.

20.1. **No new measures are being adopted. Decree-law 3/2008, which contains some segregating measures, is still in force concerning pre-school, basic and secondary education. Over the past few years there has been a clear disinvestment in education for students with “Special Educational Needs”, even though the number of these students has significantly increased. There is no data concerning the number of students with disabilities in higher education.**

20.2. **Moreover, the professional status of Portuguese Sign Language teachers is yet to be regulated**, as requested in Article 24 of the Convention, equally applicable to Sign Language interpreters.

20.3. In 2014, 98% of the students with disabilities (also called students with ‘special educational needs’) were attending regular schools with the remaining 2% attending Special Schools (DGE, 2014). This is a consequence of the legislation about Inclusive Education introduced in 2008 (Decree-Law 3/2008, modified by Law 21/2008). **However, due to budget constraints, there have been reductions of human and material resources (see Pinto & Teixeira, 2012; Pinto et al., 2014b; CNE, 2014a) which have compromised the enjoyment of inclusive quality education for all students and also may contribute to the early school leaving of students with disabilities.**

20.4. In addition, over the past five years, there has been a 65% increase of students identified as having 'special educational needs': 45.392 (in 2011) vs 75.032 (in 2015). **This increase of students was not accompanied by a proportional financial investment on Special Education, as we can see in the table below with figures about public expenditure on Special Education from 2004 to 2014 (CNE, 2015a):**

| Year | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|-------------|------|------|------|------|------|------|------|------|------|------|------|
| Euros (000) | 258 | 240 | 203 | 182 | 194 | 213 | 232 | 234 | 189 | 219 | 221 |

Source: Conselho Nacional de Educação (2015). O Estado da Educação 2014.

20.5. The Resources Centres for Inclusion (CRIs) (created to support students with ‘special educational needs’ attending regular schools) were in a recent research considered ‘one of the fundamental pillars of the inclusive school’ (CRPG, 2015). **However, this study also highlights the need to improve some aspects of the services provided, such as increasing the duration of the weekly sessions of support (e.g. speech therapy or others which, at present, are only 30 minutes in average per week. This situation was unanimously denounced, in September 2015, by all the organisations that provide these services, which demanded that the Ministry of Education extends the duration of the weekly sessions for at least 45 minutes¹². However, to date, the situation keeps unchanged.**

20.6. Additionally, **the materials (e.g. books in Braille and other assistive devices) for the promotion of inclusive schools are also insufficient and their late arrival compromises the educational success of the students (CNE, 2014b).**

20.7. **There is also a lack of support to children and young adults with temporary education needs.** This situation leaves a considerable number of children and youth without needed supports. Without an adequate support these children may be at risk of developing permanent disabilities (CNE, 2014a).

20.8. **There are problems with the use of the ICF as reference tool for evaluation and planning of intervention with students with disabilities:** for instance, lack of adequate professionals’ training to use the tool, leading to subjectivity and disparities in the

¹² Information session and positioning about the CRI, 23 September 2015. Available at http://fenacerci.pt/web/homenews/sessaoescl_cri/sessao-esclarecimentos-CRI_23-09-2015.pdf

assessments. The ICF is designed to assess the degree of incapacity in relation to the environment, not to assess the special educational needs of the students (FEEI, n.d.; Lavrador & Correia, 2009; Educare, 2010). Besides, ICF does not cover Special Educational Needs which are temporary (Pinto et al., 2014b).

20.9. **There is limited scope for the participation of families in school life and an absence of legislation enabling children and young people with disabilities to participate and/ or contest the decisions** made in relation to their own education (Pinto et al., 2014b).

20.10. **The incidence of early school leavers among students with disabilities is not being monitored and there is no disaggregated data - neither related to compulsory education (from 6 to 18) nor related to tertiary education - about early school leaving of students with disabilities.** According to official statistics, over the last 10 years Portugal reduced, in global terms, the percentage of early school leavers (aged 18-24): from 39,9% (2004) to 17,4% (2014). However, it would be important to confirm if this trend is also true for students with disabilities, or whether, on the contrary, the trend in this specific group is reversed.

20.11. **Additionally, there are also psychosocial factors, such as negative stereotypes, which compromise the implementation of an inclusive education model** – a recent report reveals that, in Portugal, parents are sometimes advised by school workers to place their children in schools or institutions directed at persons with disabilities, due to the pressure exerted by other children’s parents (FRA, 2015).

20.12. In Portugal, there is a 2% quota reserved for students with disabilities in the public national competition to access Tertiary Education. However these figures show a very low uptake of this affirmative action measure.

| Year | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|----------|------|------|------|------|------|------|------|------|
| Students | 128 | 145 | 164 | 149 | 120 | 115 | 127 | 128 |

Source: Direção-Geral do Ensino Superior (DGES)

20.13. Despite the existence of a special quota for admission to public universities of students with disabilities, **there is no legal regulation about the support that universities must make available for these students.** In consequence, students with disabilities in tertiary education face additional barriers related to denial of reasonable accommodation and lack of support services.

20.14. A survey conducted by the “Working Group for the Support of Students with Disabilities in Tertiary Education” (GTAEDDES, 2014) the number of students with disabilities attending public higher education institutions has been increasing since 2012, requiring greater attention to this subject by the government:

| Students, per type of disability | 2011/12 | 2012/13 | 2013/14 |
|---|----------------|----------------|----------------|
| Hearing Disability | 216 | 195 | 160 |
| Physical Disability | 252 | 252 | 256 |
| Visual Disability | 198 | 213 | 235 |
| Dyslexia | 138 | 156 | 169 |
| Chronic diseases | 144 | 161 | 159 |
| Psychiatric Diseases | 118 | 122 | 147 |
| Neurological problems or diseases | 57 | 73 | 90 |
| Autism spectrum disorder | 27 | 36 | 45 |
| Multi-Disabilities | 20 | 24 | 28 |
| Others | 14 | 14 | 29 |
| TOTAL | 1184 | 1246 | 1318 |

Source: GTAEDES (2014)

Recommendations

20.15. To increase the budgetary allocation providing for inclusive education.

20.16. To modify Decree-Law 3/2008, in consultation with disabled people's organisations, and provide public schools with the adequate means to ensure the inclusion of all students with disabilities in regular classrooms.

20.17. To review the reference tool used to assess students with 'special educational needs' and discontinuing the use of the ICF, since, according to Portuguese experts in special education and disabled people's organisations, this is an inadequate instrument to determine 'special educational needs'.

20.18. To collect and make available disaggregated data on students with disabilities in all levels of education, in order to be able to monitor trends with regard to dropout and completion of studies.

20.19. To include disability issues as a mandatory topic in the initial training of all teachers.

20.20. In the continuous training of teachers and non-teaching staff to increase the provision of training on disability and inclusive education, namely on its principles as well as on intervention and evaluation strategies; In order to create inclusive schools these topics should receive high priority.

20.21. To encourage the recruitment of teachers and other school staff with disabilities in regular schools.

20.22. To regulate the professional status of Portuguese Sign Language teachers, not as technicians, but with equal conditions with other teaching staff, restoring their professional dignity.

Health (art. 25)

21. Please explain whether the legislative policies and all other measures being implemented by the State Party with regards to health care and services related to sexual and reproductive health, HIV/AIDS and sexually transmitted infections, are accessible to persons with disabilities.

21.1. **Little attention has been given to the rights of people with disabilities within the legislative and policies implemented by Portugal in the field of healthcare, sexual and reproductive health, HIV/AIDS and sexually transmitted infections. In addition, health care professionals lack training concerning these issues and there are no specialised reproductive services for women and girls with disabilities in order to promote their healthy and enjoyable sexual life (ODDH, 2015).**

21.2. Portugal created, in 2007, the National Programme on Reproductive Health which focuses on the implementation of the following services: family planning, pre-natal monitoring, pre-natal diagnostic, voluntary termination of pregnancy and medically assisted procreation. **However, according to the Portuguese legislation, people under the systems of full guardianship due to “mental disabilities” are not allowed to access services of medically assisted procreation (article 6, Law 32/2006).** The services related to sexual and reproductive health are mainly available through health care centres, while services related with HIV/AIDS and sexually transmitted infections are provided through general hospitals. **Access to some health care centres may be particularly problematic to disabled people due to lack of physical accessibility to health centres facilities (Pinto et al., 2014a).**

21.3. **No information is available on how Portugal intends to promote the accessibility of persons with disabilities to healthcare and services related to sexual and reproductive health, HIV/AIDS and sexually transmitted infections.**

Recommendations

21.4. To develop policies, programmes and support services related to the promotion of the sexual and reproductive rights of women with disabilities.

21.5. To promote the training of health practitioners on sexual and reproductive rights of people with disabilities.

21.6. To ensure the availability of accessible information (e.g. information leaflets about health issues in Braille, etc.) in the National Health Service.

Habilitation and rehabilitation (art. 26)

22. ***Please specify the annual budget dedicated to providing assistive devices, as well as the average waiting time to receive them.***

22.1. The overall budget for financing assistive devices, in 2014, was 11.300.000,00 (Order 2671/2014) and, in 2015, was 13.480.000,00 (Order 6478/2015).

22.2. **In Portugal, the process of obtaining assistive devices is extremely lengthy and bureaucratic:** it may take about one year, or even be refused (typically the annual budget runs out before the end of each year, and applicants are asked to submit a new application the following year). Often, when the device finally reaches the applicant, it is maladjusted to his/her needs, in particular when it refers to children and adults with a chronic or a degenerative disease. This situation may considerably compromise the adequate social protection of disabled people in Portugal (ODDH, 2015).

Recommendations

22.3. To expedite and simplify the procedures involved in the allocation of assistive devices and support products, in order to ensure an effective and cost-free universal system, taking into account the person in her context.

22.4. To increase the support for the maintenance of such products and to introduce control mechanisms to ensure the quality of the allocated products.

22.5. To ensure timely access to neurological and physical rehabilitation to all the persons who need it and increase the number of medical practitioners in this area.

Work and employment (art. 27)

23. *Please inform the Committee on instruments, resources and programmes available to the Employment and Vocational Training Institute (IEFP) to improve employability of persons with disabilities. Likewise, please provide information on measures being developed to eliminate discrimination and inequality in employment and conditions of work of persons with disabilities, in particular women with disabilities. Please explain the function of occupational activity centres and what working conditions apply there, including the average wage. Please provide information on data disaggregated by sex on the rate of unemployment for persons with disabilities as compared with their non-disabled counterparts.*

23.1. **The Employment and Vocational Training Institute (IEFP) offers incentives to the companies that employ people with disabilities which have proven ineffective. There are measures related with professional training which are segregated and not inclusive.**

23.2. **The Occupational Activity Centres (CAO) are not employers and do not provide jobs.** They are structures where people with disabilities are segregated, in occupational activities, whose economic compensation is very low (it cannot exceed the amount of the social pension) and sometimes non-existent (Ordinance 432/2006, 3 May, article 8). It should be noted, nevertheless, that this programmes are often the only social response for young people with disabilities, especially for those with profound intellectual disabilities, including autism spectrum disorders, after completing or dropping out of compulsory education (when they reach the age of 18 years-old).

23.3. Although there are numerous measures in place to support vocational training and transition to employment of persons with disabilities (e.g. training, internships, information, assessment and orientation, job placement support, post-placement support, assist in workplace adaptation, attribution of assistive devices, support to remove architectural barriers, reduction in the contributions to social security, etc.) **the employment rate of persons with disabilities is much lower than that of persons without disabilities and the rate of unemployment is high:** the national average of employed persons without disabilities is 66,9%, while that is of men with disabilities is 47,25 and 42,7% for women with disabilities (EU SILC, 2013).

23.4. **Disaggregate data on the number of people with disabilities registered in the Employment and Vocational Training Institute (IEFP) are not publicly available in the official statistics reports and is only possible to access upon specific request. In any case, the data show that there are less women than men with disabilities registered as unemployed, and reveal an upward trend among the registered persons with disabilities in 2015 as compared to 2011, despite of the measures in place:**

| Years | Number of unemployed persons registered at employment centres | | | |
|-------|---|---|-------|--------|
| | Total, thousands | Persons with disabilities (among the total) | | |
| | | Total | Male | Female |
| 2011 | 576 383 | 10 408 | 6 372 | 4 036 |
| 2014 | 564 312 | 12 080 | 7 270 | 4 810 |
| 2015* | 506 162 | 12 278 | 7 263 | 5 015 |

Source: Employment and Vocational Training Institute. Data sent by request of ODDH, 30 September. *Data from 2015 reported in 30 September – Provisional Figures.

23.5. Furthermore, the IEFP data also show that, since 2010, there has been a considerable decrease in the public expenditure on vocational training of disabled people, while the number of beneficiaries of the various programs has increased. The public expenditure for the vocational training of persons with disabilities suffered, between 2010 and 2013, a negative variation of minus 79,1% (from €77 256 837,64 in 2010 to €16 165 152,53 in 2013) while the number of beneficiaries of the various programmes increased by 37,4% (ODDH, 2015), as presented in table below:

| The number of persons with disabilities - beneficiaries of professional rehabilitation measures and the allocated budget (€) | | | | | |
|---|----------------------|----------------------|----------------------|----------------------|----------------------|
| | December 2010 | December 2011 | December 2012 | December 2013 | December 2014 |
| Total number of beneficiaries | 11718 | 12529 | 14417 | 18717 | 23630 |
| Budget - € | 77 256 837,64 | 30 088 532,87 | 25 847 788,33 | 16 165 152,53 | 11 375 717,28 |

Source: Employment and Vocational Training Institute

23.6. As far as we know, there is no evaluation available about the Occupational Activity Centres (CAO), although this is a social care service with long waiting lists, namely for young people and adults with intellectual disabilities, including those with autism spectrum disorders.

Recommendations

23.7. To review the framework legislation concerning the measure “employment internships” in order to establish a set of obligations on the part of the employer (notably regarding the creation of new jobs) once the specific financial support is ended.

23.8. To fulfil the employment quotas for persons with disabilities in the public sector.

23.9. To regulate employment quotas in the private sector.

23.10. To improve the monitoring and enforcement mechanisms concerning the prohibition of discriminatory practices on the grounds of disability in the workplace.

23.11. To reinforce the complaint and protection mechanisms regarding work-related harassment and violence and to raise awareness about disability issues among employee support structures (e.g. Ombudsman, unions, workers’ committees);

23.12. To raise employers’ awareness about disability issues and to promote corporate social responsibility concerning the employment of persons with disabilities.

23.13. To ensure the collection and public availability of statistical data about the employment and unemployment figures on people with disabilities.

23.14. To review the legislation about the Occupational Activity Centres, from a human rights perspective, and promote the monitoring of the activities developed there.

Adequate standard of living and social protection (art. 28)

24. Please provide information, including data on the budgetary cuts, on how the financial crisis and the austerity measures have affected the adequate standard of living for persons with disabilities and how its consequences have been dealt with.

24.1. **In 2010, as a consequence of the financial crisis, the conditions for entitlement to all cash benefits within the national social security system changed and became more stringent** (Decree-law 70/2010) and consequently:

24.1.1. **There was a decrease on the number of beneficiaries in some social benefits**, such as the Invalidity Pension, the Lifetime Monthly Allowance and the Special Education (see additional information in the answers to the question 26).

24.1.2. **In relation to the special scheme of reimbursement of medicine expenditures, since 2010, only the pensioners with family income equal to or less than € 419,22 per month can apply for this benefit.**

24.1.3. **The rules of transport for non-urgent medical care were also changed as it was established that only people with 60% or more of incapacity or families with an income equal or less than € 419,22 per month can have access to these benefits.** Moreover these services can only be used for 120 days per year, and this limit can only be overcome in exceptional circumstances.

24.2. Some of the measures taken to mitigate the effects of the austerity measures were:

24.2.1. People with disabilities (with an incapacity level of 60% or more) may request the exemption from the payment of user fees in National Health Services. However in order to get this exemption disabled people need to pay 50 Euros to obtain a Medical Incapacity Certificate (Decree-Law 8/2011). This amount may limit the access of disabled people who live under extreme poverty and thereby are those who need most of these services. Disabled people with a family income equal or below € 628,83 are also exempt to pay Health Services.

24.2.2. Unemployed persons with disabilities are entitled to an invalidity pension or a minimum income scheme.

24.2.3. Persons with disabilities can also have a discount on gas, electricity and public transport expenditures.

24.2.4. Persons with disabilities have access to a special housing credit.

24.2.5. Disabled people with low income can apply for State support for house renting. This specific group of people can also have access to free meals as part of the Program of Food Emergency launched by the Portuguese State in April 2012 in order to combat starvation amongst the poorest.

24.2.6. As promised by the Portuguese State, in the National Reform Plan, in 2015 there was a rise of 1% of invalidity pensions.

25. *Please inform on the measures taken by the State Party to monitor the impact of the financial crisis on children.*

25.1. **In 2009 State expenses to support families with children represented 1,71% of GDP, while after the economic crisis in 2011 this support represented 1,44% of GDP. These values are below the OECD countries' average (2,61% in 2009 and 2,55% in 2011). In the period between 2011 and 2013 there was a reduction in terms of the economic support offered to these families by the State and, at the same time, a rise on taxes (Wall et al., 2015).**

25.2. **Access to social benefits** (such as family allowance, social parental benefit, minimum income scheme, unemployment benefit and social unemployment benefit) **became more stringent and the amount of the financial support offered diminished** (Wall et al., 2015).

25.3. A rise of 10% in the unemployment benefit for each couple member of families with children was introduced but only families whose income was between € 8.803,63 to € 14.672.70/year were entitled to it. Single parent's households with children were also entitled to this benefit.

25.4. With the economic crisis the risk of poverty of families with children became higher. Indeed, in 2013, 29,2% of children in Portugal lived in households with material deprivation. Despite existing measures and social benefits there is evidence that households with children in Portugal are the most vulnerable to poverty (Wall et al., 2015). Given the added costs associated with disability it is very likely that the risk of poverty is even higher among disabled children and their families.

26. *Please indicate the allowances and economic support benefits that are currently available for persons with disabilities, including those provided to cover additional disability-related expenses.*

26.1. **A study conducted in 2010 revealed that the households of disabled people in Portugal face additional annual costs that vary from €7.716 to €25.307 and these amounts clearly exceed the awarded disability-related social benefits (Portugal et al., 2010). The support offered to families in terms of disability-related social benefits is insufficient as there is evidence that suggests that these transfers are not enough to overcome the high economic vulnerability of persons with disabilities in Portugal (Pinto & Teixeira, 2012).**

26.2. Currently, the social benefits available are:

| Social Benefits | Amounts Provided |
|---|--|
| Family Allowance Bonus for Children and Youth with Disabilities under the age of 24 years-old | Ranges between €59,48 and €139,15 (depending on the household income and whether it is or not a single-parent household) |
| Special Education Allowance for students under the age of 24 years-old | Up to €293,45/Month during the school year |
| Allowance for assistance to a child with disability or chronic illness - temporary provision (up to 6 months which can be extended up to four years limit) | Variable amount according to the claimant's contributory career |
| Invalidity Pension – for persons who are in a situation of incapability for working | Variable amount according to the claimant's contributory career |
| Social Invalidity Pension – for persons who are not entitled to the invalidity pension, and are in a situation of incapability for working | Ranges between €237.33 and €256.31 (depending on the age) |
| Lifetime Monthly Allowance – for persons with disabilities older than 24 years old | €176,76/Month |
| Third Person Assistance Allowance – for | €88,37/Month |

| | |
|--|--|
| children or adults with disabilities who require the permanent help of a third person. | |
|--|--|

26.3. Type of Social benefit and number of beneficiaries in the last 4 years:

| | 2011 | 2012 | 2013 | 2014 |
|---|---------|----------------------|----------------------|----------------------|
| Family Allowance Bonus for Children and Youth with Disabilities | 84.043 | 83.714 ⁺ | 84.563 ⁺ | 84.786 ⁺ |
| Special Education Allowance | 14.245 | 15.508 ⁺ | 16.107 ⁺ | 9.146 ⁺ |
| Invalidity Pension | 282.706 | 277.113 ⁺ | 266.880 ⁺ | 258.732 ⁺ |
| Lifetime Monthly Allowance | 13.639 | 13.410 ⁺ | 13.356 ⁺ | 13.104 ⁺ |
| Third Person Assistance Allowance | 12.949 | 13.283 ⁺ | 13.443 ⁺ | 13.511 ⁺ |

Source: Statistics from Social Security

26.4. Special Protection in Invalidity: this is a special social benefit that, until December 2015, was provided to persons who were unable to work due to specific health problems (ex. multiple sclerosis, Machado–Joseph disease, and others). However, since January 2016, eligibility for this social benefit does not depend anymore on a specific disease but on the verification of ‘objective conditions of permanent incapacity to work’ (Decree-Law 246/2015). These changes have been very criticized by various associations, especially because the law establishes that applicants must present medical conditions that “are predicted to evolve to a situation of dependence or death within three years’ time”¹³. In fact, given the unpredictable development of certain diseases (e.g. lateral amyotrophic sclerosis) this condition may exclude a number of people from being entitled to this benefit.

26.5. There are also a number of tax benefits for people with disabilities; the most important are: (1) special rates in the Personal Income Tax (IRS) and benefits in some deductible expenses for IRS; (2) exemption from the vehicle tax; (3) exemption from the annual circulation tax on vehicles and (4) exemption on the value-added tax in the purchase of vehicles or wheel chairs (AT, 2015). However, these measures are not sufficient to effectively compensate the additional costs of disability, which may vary from €7.716 até €25.307 per year (Portugal et al., 2010).

Recommendations

26.6. To raise the amount of disability-related cash benefits, and to review the eligibility criteria to access them in order to ensure an adequate standard of living.

26.7. To determine a tax policy of positive discrimination for the persons with disabilities and their families, in order to compensate the additional costs of disability (e.g. review the kind of expenses that are tax deductible).

26.8. To raise awareness and train civil servants (particularly those on front office tasks) to address disability issues and persons with disabilities from a human rights perspective.

Participation in political and public life (art. 29)

27. *Please provide information on the measures undertaken to maximize the opportunities for all persons with disabilities, and to participate in all aspects of political life, including being guaranteed the right to vote. Which legislative and policy*

¹³ "Invalidity pension only for those who are dependent on others or have life expectancy of three years of life" (27-10-2015) in Observador.

environment is in place to guarantee access of people with disabilities to electoral processes?

27.1. **The electoral law in Portugal does not foresee alternative ways for persons with disabilities to cast their vote independently** (i.e. through electronic voting or ballot papers in Braille); it only foresees the possibility of the voter to be accompanied by a personal assistant of his/her choice, who exerts the right to vote in his/her place. Even if this system allows blind people to vote, it compromises the right to a free and secret vote.

27.2. **On the other hand, there is no specific regulation to ensure the accessibility of polling stations** (the Lisbon Municipality is preparing a reference guide for the access of polling stations to be presented to the National Elections Commission) and in spite of the recommendations made by the National Election Commission, **conditions of physical accessibility are not always ensured, which prevents some people with physical impairments from exercising the right to vote.** Moreover, the dissemination of information materials in accessible formats during electoral campaigns is scarce since these materials are often made available only in the final stages of the campaigns and are poorly advertised and distributed. The absence of specific regulations guaranteeing the accessibility of this information leads to situations of discrimination in the exercise of free and informed voting.

27.3. In the last parliamentary elections (October 2015), **the National Electoral Commission distributed to the polling stations a document entitled 'Clarifications Election Day' in which it states that if the chair of the polling station "understands that the voter reveals notorious mental incapacity" he/she should require that the person presents a document proving his/her capacity. This situation is clearly discriminatory** (CNE, 2015b).

Recommendations

27.4. To develop specific regulations to ensure accessibility to the polling stations, including the availability of alternative forms of voting (electronic voting, Braille ballots, among others).

27.5. To regulate and enforce accessibility of information materials in electoral campaigns, such as leaflets, videos, etc.

27.6. To require polling station officers to undertake training on how to deal with voter with disabilities from a human rights perspective.

Participation in cultural life, recreation, leisure and sport (art. 30)

28. *Please inform on when the State Party is planning to sign and ratify the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, of the World Intellectual Property Organization. Please also provide information on accessibility to tourism, recreation and leisure.*

28.1. **Portugal has not yet ratified the Marrakesh Treaty.**

28.2. **The Law on Accessibility (Decree-Law 163/2006) and the Anti-discrimination Law (Law 46/2006) require accessibility standards in all areas of life, including tourism, leisure and sports facilities, but it has been insufficiently enforced. So despite the legislation and measures in place persons with disabilities still face a lot of obstacles and barriers that prevent their full participation in these activities** (Pinto et al., 2014a).

Recommendations

28.3. To ensure the enforcement of the Law of Accessibility so that people with disabilities can participate in cultural, recreational, leisure and sport activities.

C. Specific obligations

Statistics and data collection (art. 31)

29. *Please explain what measures are being implemented by the State Party to collect disaggregated statistics on persons with disabilities, in particular by sex and age, on children, women and girls with disabilities, with indicators based on human rights.*

29.1. **There is no information on the measures implemented by the State Party to collect disaggregated statistics on persons with disabilities, namely by sex and age, on children, women and girls with disabilities, with indicators based on human rights.** There is indeed a lack of statistics concerning disability in Portugal. The first and last study on disabled persons in Portugal was conducted in 1995 and since then no major official survey has been conducted. The CENSUS 2011, however, included information on the degree of limitations that people have in developing daily tasks (using the Washington Group questions) as a proxy for disability.

Recommendations

29.2. To improve the systematic gathering of statistical data on persons with disabilities in Portugal.

29.3. To conduct a nationwide study on disability.

29.4. To develop a system of disability-rights monitoring indicators in Portugal. All of this should be done with the involvement of persons with disabilities and disabled people's organisations.

International cooperation (art. 32)

30. *Please indicate how the State Party ensures its international cooperation policies, programmes and monitoring frameworks are inclusive of and accessible to persons with disabilities.*

30.1. The Resolution of the Council of Ministers 17/2014 approves the Strategic Concept of the Portuguese Cooperation 2014-2020 that regulates the cooperation of Portugal with Portuguese-speaking African countries and East-Timor. One of the goals of this Strategy is to support and promote projects to combat poverty among vulnerable groups such as children, the elderly and disabled people.

30.2. There is no other information available on how the State Party ensures its international cooperation policies, programmes and monitoring frameworks are inclusive of and accessible to persons with disabilities.

Recommendations

30.3. Include the disability perspective in the programs and international cooperation policies.

National implementation and monitoring (art. 33)

31. *Please provide detailed information on the structure of the independent mechanisms provided for in Article 33.2 of the Convention, as well as the scheduled date for their implementation. Please indicate whether the national human rights institution plays a role in the monitoring of the Convention.*

31.1. Only recently (through the Council of Ministers Resolution 68/2014, 21 November), the national contact points and the mechanism of national coordination were defined and a national mechanism for monitoring the implementation of the Convention was established. Accordingly, the General Directorate of Foreign Policy of the Ministry of Foreign Affairs and the Strategy and Planning Department of the Ministry of Solidarity, Employment and Social Security are defined as contact points for matters related to the implementation of the Convention. The INR was appointed as the coordinating mechanism at the government level that promotes necessary actions for the implementation of the Convention. And a national mechanism to monitor the implementation of the Convention has been defined, composed of 10 members: representatives of public entities and of civil society organisations from all areas of disability and an academic expert on the field. **However, the process of appointment of the members for the mechanism has not yet been concluded and therefore the mechanism is not yet fully in place.**

Recommendations

31.2. To increase the participation and representation mechanisms of disabled people's organisations in disability public policy with a minimum quota of 70% of disabled people's organisations represented.

References

Legislation¹⁴

a) International Law

- Convention on the Rights of Persons with Disabilities
- Convention on the Rights of the Child

b) National Law

- Constitution of the Portuguese Republic.
- Penal Code
- Civil Code
- Labour Code

- Decree-Law 319-A/76
- Decree-Law 163/2006
- Decree-Law 34/2007
- Decree-Law 3/2008
- Decree-Law 290/2009
- Decree-Law 8/2010
- Decree-Law 70/2010
- Decree-Law 8/2011
- Decree-Law 22/2011
- Decree-Law 126/2011
- Decree-Law 53/2014

- Order 15432/2012
- Order 2671/2014
- Order 6478/2015

- Law 14/79
- Law 36/1998
- Law 101/1999
- Law 38/2004
- Law 32/2006
- Law 46/2006
- Law 16/2007
- Law 23/2007
- Law 21/2008
- Law 115/2009
- Law 112/2009
- Organic Law 1/2001
- Norm 15/2013
- Ordinance 432/2006

- Ordinance 149/2011
- Ordinance 67/2012

- Draft Bill 61/XIII

- Resolution of the Council of Ministers 9/2007
- Resolution of the Council of Ministers 101/2013
- Resolution of the Council of Ministers 17/2014
- Resolution of the Council of Ministers 68/2014
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¹⁴ All the legislation is available in Portuguese in <https://dre.pt/web/guest/pesquisa-avancada>

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