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LEGISLATION TO COUNTER DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

Integration of people with disabilities

LEGISLATION TO COUNTER DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

Report drawn up by the Working Group on legislation
to counter discrimination against persons with disabilities
(P-RR-LADI)

in co-operation with

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Integration of people with disabilities

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COUNCIL OF EUROPE MEMBER STATES

ALBANIA		LITHUANIA
ANDORRA	LUXEMBOURG	
AUSTRIA	MALTA	
BELGIUM	MOLDOVA	
BULGARIA	THE NETHERLANDS	
CROATIA	NORWAY	
CYPRUS	POLAND	
CZECH REPUBLIC	PORTUGAL	
DENMARK	ROMANIA	
ESTONIA	RUSSIA	
FINLAND	SAN MARINO	
FRANCE	SLOVAKIA	
GEORGIA	SLOVENIA	
GERMANY	SPAIN	
GREECE	SWEDEN	
HUNGARY	SWITZERLAND	
ICELAND	"THE FORMER YUGOSLAV REPUBLIC	
IRELAND	OF MACEDONIA"	
ITALY	TURKEY	
LATVIA	UKRAINE	
LIECHTENSTEIN	UNITED KINGDOM	

FOREWORD

The Council of Europe is a political organisation which was founded on 5 May 1949 by ten European States in order to promote greater unity between its members. It now numbers 41 member states.

The main aims of the organisation are to reinforce democracy at all levels of government, human rights and the rule of law, to strengthen social cohesion and to promote awareness of a shared European identity with due regard for cultural diversity. Its work has led, to date, to the adoption of over 170 European conventions and agreements, including the European Convention on Human Rights and the European Social Charter. Several “Partial Agreements” enable a limited number of States which so wish to co-operate in a specific field, such as the quality of medicines, constitutional law or the social and public health field.

Since 1989 the Council of Europe has admitted most of the countries of central and eastern Europe as members and supported them in their efforts to implement and consolidate their political, legal and administrative reforms.

The Council of Europe has its permanent headquarters in Strasbourg (France). It operates through a variety of bodies:

The governing body is the Committee of Ministers, composed of Ministers of Foreign Affairs of the 41 member states or, on a daily basis, their permanent representatives in Strasbourg.

The other statutory organ is the Parliamentary Assembly, comprising 582 members from the 41 national parliaments, as well as special guests from certain European non-member states.

The Congress of Local and Regional Authorities of Europe, also composed of 582 members, represents the entities of local and regional self-government within the member states.

The European Court of Human Rights, comprising a resident judge from each contracting Party, is the judicial body competent to adjudicate complaints brought against a state by individuals, associations or other contracting states on the ground of violation of the European Convention on Human Rights.

These bodies and the many intergovernmental committees are served by a multinational European Secretariat under the authority of a Secretary General.

PART 1: INTRODUCTION

Aims, objectives and working methods

An important aspect of the development of rehabilitation and integration of persons with disabilities is research on the question of discrimination. In the 1990s many States in Europe adopted legislation on a variety of issues in respect of persons with disabilities, thus showing the need for action. Despite the progress achieved in numerous areas, many persons with disabilities in Europe still feel discriminated against. Therefore, many countries strive towards equal opportunities policies.

A policy of equal opportunities is one that is designed to meet all requirements of the principle of equality, not only formal or *de jure* equality and the absence of discrimination, but also full and effective equality in the sense of enabling all individuals to develop and fully exercise in the social dimension their social, economic and political rights. The promotion of effective equality may require the adoption of special measures where this is necessary and consistent with the principle of non-discrimination to take account of the specific conditions of individuals or groups in society¹.

The Council of Europe's Committee on the Rehabilitation and Integration of People with disabilities (Partial Agreement) (CD-P-RR) decided in June 1996 to review the legislation and practice of its member and observer states².

The Working Group on legislation against discrimination of people with disabilities (P-RR-LADI) was created as a sub-committee to the Committee of the Rehabilitation and Integration of People with disabilities (Partial Agreement) (CD-P-RR) with the following terms of reference:

“Within the general framework of the terms of reference of the CD-P-RR, which aim at enhancing, in the full respect of the rights enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms, human dignity by guaranteeing independence and full citizenship of persons with disabilities:

¹ Cf. Council of Europe Recommendation No. R (98) 3 of the Committee of Ministers to member States on access to higher education, adopted on 17 March 1998.

² **Member states:** Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom.

Observer states: Estonia, Hungary, Iceland, Latvia, Lithuania, Poland, Slovenia and Canada.

collection and comparative analysis of legislation - including an analysis of their legal and judicial scope - against discrimination of persons with disabilities in the member and other states concerned
monitoring of their implementation
analysis of the positions of associations of persons with disabilities as well as employers' organisations and trade unions as regards legislation referred to under a.”

The Working Group carried out its studies between autumn 1996 and spring 1999. It commissioned Professor Dr. Heinz-Dietrich Steinmeyer, Westfälische Wilhelms-Universität, Münster, Germany, to undertake a comparative analysis of legislation to counter discrimination against persons with disabilities. This work, which has been discussed and accepted by the Working Group, forms Part 2 of this report.

Participating national delegations have contributed in two ways: firstly, by submitting factual reports on national legislation in respect of persons with disabilities and, secondly, by reporting on the practical situation in all spheres of life as identified in the Council of Europe *Recommendation No. R (92) 6 on a coherent policy for people with disabilities*. A total of more than 50 national contributions were received from a wide range of member and observer states.

The work of other international intergovernmental organisations was a constant stimulus and source of inspiration for the Working Group. The Commission of the European Communities was represented at its sessions.

International non-governmental organisations (INGOs) of and for persons with disabilities which hold consultative status with the Council of Europe were consulted in two ways: firstly, written comments were invited, secondly two hearings were held¹.

¹ Disabled Peoples' International - Europe (DPI Europe), European Action of the Disabled (AEH), European Association for Special Education (EASE), European Disability Forum (EDF), European Group for the Employment of people with mental disabilities, European Regional Council of the World Federation of Mental Health (ERC-WFMH), European Trade Union Confederation (ETUC), Inclusion International/International League of Societies for Persons with Mental Handicap (ILSMH), International Association of Autism Europe (IAAE), International Federation of Disabled Workers and Civilian Handicapped now: International Federation of Persons with Physical Disability (FIMITIC), Rehabilitation International (RI), Union of Industrial and Employers' Confederation of Europe (UNICE).

2. Working definitions

The Working Group had extensive discussions on the definition of the terms crucial to its activities, such as *disability* and *discrimination*. Since the definitions used in member States varied, the need for working definitions was clearly felt by the Group.

The term *disability*

The Working Group agreed to use as a working definition the WHO definition of *impairment, disability* and *handicap* as defined in the International Classification of Impairments, Disabilities and Handicaps (ICIDH) of 1980. The Working Group took note of the ongoing revision process at WHO level.

The term *discrimination*

Although the positions of the member states varied, in particular from a conceptual point of view, the underlying principles were very similar. The Working Group bore in mind the considerations set out in Appendix 1 when reflecting on the process of discrimination in relation to persons with disabilities.

PART 2: LEGISLATION TO COUNTER DISCRIMINATION AGAINST PERSONS WITH DISABILITIES. COMPARATIVE ANALYSIS

I. GENERAL REMARKS

The background to the task of the Working Group on legislation against discrimination of persons with disabilities (P-RR-LADI) was the concern to enhance human dignity, in accordance with the rights enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms by guaranteeing independence and full citizenship for persons with disabilities. Its task was therefore to collect and make a comparative analysis of legislative texts - including an analysis of their legal and judicial scope - against discrimination of persons with disabilities, as well as to monitor their implementation.

The Working Group followed the principles and aims of Recommendation No. R (92) 6 of the Committee of Ministers on a coherent policy for people with disabilities. According to this recommendation, a

"coherent and global policy in favour of people with disabilities, or those who are in danger of acquiring them, should aim at

preventing or eliminating disablement, preventing its deterioration and alleviating its consequences;

guaranteeing full and active participation in community life;

helping them to lead independent lives, according to their own wishes.

It is an ongoing and dynamic process of mutual adaptation, involving on the one hand people with disabilities living according to their own wishes, choices and abilities, which must be developed as far as possible, and on the other hand, society which must demonstrate its support by taking specific and appropriate steps to ensure equality of opportunity.

All people who are disabled, or are in danger of becoming so, regardless of their age and race, and of the nature, origin, degree or severity of their disablement, should have a right to individual assistance, to enable them to lead a life as far as possible commensurate with their ability and potential".

Article 15 of the Council of Europe's Revised European Social Charter establishes the right of persons with disabilities to independence, social integration and participation in the life of the community:

"With a view to ensuring that persons with disabilities, irrespective of age and the nature and origin of their disabilities, can effectively exercise the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible, through specialised bodies, public or private;

to promote their access to employment by all measures which encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;

to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure."

The present report is by no means able to cover the full details of all existing or planned legal provisions of the member states of the Council of Europe Partial Agreement in the Social and Public Health Field. Certain countries' legislation may be mentioned purely by way of example, which does not mean that countries not cited do not possess or intend to prepare similar laws, provisions or measures.

1. TERMINOLOGY

In carrying out its task, the Working Group needed to bear in mind that the legal systems of the member states use different approaches and may often employ terms that differ from one country to another. In some countries, terms even differ between the various fields of legislation. It is therefore important to define the most important terms used by the Working Group.

1.1 Definition of terms

The Working Group used the WHO definitions of 1980, i.e.

- *impairment*: any loss or abnormality of psychological, physiological or anatomical structure or function;

- *disability*: any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being;

- *handicap*: a disadvantage for a given individual, resulting from an impairment or a disability, that limits or prevents the fulfilment of a role that is normal (depending on age, sex, and social and cultural factors) for that individual.

1.2 Use of the term "discrimination": some comments

The use of the term "discrimination" in national legislation varies according to the following criteria:

1.2.1 The objectives pursued

If the aim of the measures is to prevent prejudicial treatment, the use of the term "discrimination" refers only to such concepts as *impairment* or *disability*. In this way, all kinds of distinction based on *impairment* or *disability* can be prevented and equal treatment of all people guaranteed. But if the aim is to compensate for given *handicaps*, the use of the term must take account of certain aspects of the *handicaps* to be compensated for. Even if the provisions are aimed at enabling the public authorities to improve the situation of persons with disabilities, the use of the term "discrimination" must cover the concepts of prejudicial treatment or disadvantage in order to distinguish measures of preferential treatment from discrimination and its prohibition.

Accordingly, the use of the term "discrimination" differs not only from country to country, but also within the different fields of national legislation according to the aims pursued and the approach adopted.

1.2.2 Factors of distinction

In considering discrimination in relation to disability, it has to be remembered that disability differs from other possible factors of distinction, such as race, sex or nationality. Disadvantages resulting from race, sex or nationality can arise only in the case of differences of treatment by other individuals or public authorities. Without such differences of treatment there would be no disadvantages for those affected by this factor of distinction. Persons with disabilities, however, have disadvantages resulting not only from treatment by others, but also from their impairment. Consequently, if a state does not simply wish to deal with the general problem of unequal opportunities for

its citizens, it must also promote the provision of opportunities for persons with disabilities. To permit such promotion, the use of the term "discrimination" should include the specific disadvantages of persons with disabilities.

1.2.3 Distinction within the group of persons with disabilities

It should also be taken into account that not all persons with disabilities need the same measures of promotion to be able to take part in all areas of day-to-day life to the extent that non-disabled persons take for granted. Consequently, many provisions in various fields of legislation relate only to disabilities of certain degrees. Persons with a lower degree of disability are not covered by them. In Germany, for example, most special provisions for persons with disabilities refer only to people with a degree of disability of at least 50 per cent.

1.2.4 Forms of distinction aimed at "promotion", "support" or "facilitation"

Consideration also has to be given to whether a particular measure aimed at a certain kind of "promotion", "support" or "facilitation" can be regarded as discriminatory if it also involves a disadvantage for the person concerned, e.g. the transfer of a pupil with a disability from an ordinary school to a special school for children with disabilities. Such a transfer entails segregating the pupil with disabilities and thus creating disadvantages, such as alienation from friends and maybe the family, a longer journey to school and the award of a school leaving certificate from a special education school, which is usually regarded as of inferior value. All these disadvantages are covered by the term "handicap" as already defined above. It has to be remembered that the transfer is often not made arbitrarily but to provide the disabled pupil with special education, promotion or support. Should such segregation be prohibited as a kind of discrimination, the term "discrimination" must be used in a way that any disadvantageous result confirms the assumptions. The German Federal Constitution Court (*Bundesverfassungsgericht*) pointed out in its decision in a school transfer case of 8 October 1997 that any disadvantage caused by a measure of a public authority was covered by the anti-discrimination rule of Art. 3 Sec. 3 of the German Constitution even though the measure was designed to provide the disabled pupil with a special education.

How this can be brought into line with preferential treatment is dealt with in chapters 3 and 4. This includes the question of how two different approaches such as the "idea of anti-discrimination" or "fundamental equality of treatment", on the one hand, and the "concept of preferential treatment" or "compensation of given disadvantages", on the other, can be harmonised.

The above-mentioned remarks should be taken into account to allow a comparison between the different approaches in member states.

2. POSSIBLE WAYS OF IMPROVING THE SITUATION OF PERSONS WITH DISABILITIES

In general, member states use different approaches in order to improve the situation of persons with disabilities. These approaches can be classified as the "idea of anti-discrimination" or "fundamental equality", on the one hand, and the "concept of preferential treatment" or "compensation of given disadvantages" of persons with disabilities, on the other. The two approaches are not mutually exclusive.

2.1 Idea of anti-discrimination

The "anti-discrimination" approach demands general non-discrimination in respect of a disability in comparison with the situation of non-disabled people. This usually means that in all the situations/areas to be covered the situation of persons with disabilities has to be compared with that of non-disabled persons. If there is any difference which cannot be justified by special circumstances, this will be classified as discrimination. In the United Kingdom, failure to comply with the Disability Discrimination Act's obligation to make reasonable adjustments is also classified as discrimination. The aim of this approach is to preclude any distinction between human beings on the ground of disability.

Legal systems which base the improvement of the situation of persons with disabilities mainly on anti-discrimination rules of this kind will have to provide judicial remedies for persons with disabilities, who are affected by these discriminatory measures.

2.2 Concept of preferential treatment

Another approach already mentioned, that of the "concept of preferential treatment", involves identifying areas where disability typically leads to disadvantages for the people concerned and improving the situation by positive/active measures. The aim of this approach is to enable any person with a disability to take part in all areas of daily life by compensating for given disadvantages. In employment, for example, a certain quota accompanied by penalties as well as incentives might achieve a similar result. This obliges employers to recruit persons with disabilities and may help to integrate them. It may not totally avoid discrimination against persons with disabilities but it can improve their general situation. Mobility of persons with disabilities can be improved by special allowances or benefits for certain types of disability. Access to information can also be improved by using such an approach. Another positive approach, as followed in the French system for example, might be to grant allowances or other kinds of support.

2.3 Summary

This section illustrates the different approaches adopted by member states. No judgement is to be inferred about the respective merits of these approaches, which can be seen as exchangeable and/or complementary and/or leading to the same practical results. For the purposes of this report, both approaches need to be kept in mind and regarded as possible solutions to the problem. Indeed, the two approaches are not mutually exclusive, and in a number of countries they are mixed or combined. The

extent to which "preferential treatment" combats discrimination by "levelling the playing field" or gives rise to discrimination by treating people differently is an interesting question.

II. STATUS OF ANTI-DISCRIMINATION LAWS IN THE MEMBER STATES

The reports of the national delegations showed that rules prohibiting discrimination on the grounds of disability as well as rules demanding equal treatment of persons with disabilities and non-disabled persons vary in legal status, legal quality and strictness among the member states. The preferential treatment arrangements also vary in legal status. Some of these differences emanate from the different legal and constitutional systems of the member states.

A constitution can be defined as the body of legal or traditional principles regulating relations between state authorities and between those authorities and citizens. The constitutional models operating in member states differ considerably - from written constitutions, such as those of most member states, to the unwritten constitution of the United Kingdom.

1. ANTI-DISCRIMINATION RULES IN WRITTEN CONSTITUTIONS

A number of countries have written constitutions which contain an anti-discrimination rule or an equal treatment provision that explicitly covers persons with disabilities. Some other countries have written constitutions which contain more general anti-discrimination rules or equal treatment provisions that cover persons with disabilities by implication. Examples are discussed below.

1.1 Explicit anti-discrimination rules with regard to disability

An express rule on non-discrimination is to be found in Art. 3 Sec. 3 of the Constitution of the Federal Republic of Germany ("No one may be discriminated against on account of their disability"). Likewise, Art. 7 Sec. 1 of the Austrian Constitution was amended recently in order to include an express prohibition of discrimination on the ground of disability.

Art. 15 Sec. 1 of the Canadian Charter of Rights also includes a prohibition of discrimination based on disability. However, this provision does not refer to any distinction to improve the situation of persons with disabilities.

In the Portuguese Constitution, the legal position of persons with disabilities is the subject of specific statutory protection under Art. 71. This constitutional rule sets out the principle that citizens with physical or mental disabilities are fully covered by the rights and duties laid down in the constitution, except the rights or duties which they are incapable of exercising or fulfilling, due to their disability.

The constitutional principle of equality incorporated in Sec. 5 of the Finnish Constitution includes an explicit prohibition of discrimination on the ground of disability.

Article 28 of the Constitution of the Republic of Estonia places persons with disabilities under the special care of the government and local authorities.

There are no references to the degree of disability in any of these constitutional rules.

1.2 General anti-discrimination rules

The constitutions of most of the member states which reported include a general anti-discrimination rule or a general equal treatment provision not specifically focused on disability. In most cases, there is a general rule referring to certain grounds of discrimination, such as sex, religion, nationality, etc. Here, mention should be made of the Constitutions of Belgium (Article 11), Estonia (Art. 12), France (Preamble of the constitution of 4 October 1958 with reference to the 1789 Declaration of the Rights of Man and of the Citizen), Hungary (Sec. 70 A of Act XX of 1949, the Constitution of the Republic of Hungary) Luxembourg (Art. 11), the Netherlands (Art. 1), Poland (Article 32), Switzerland (Article 4 of the Federal Constitution) and Spain (Art. 14). According to decisions of the respective national courts, discrimination based on disability is also covered by these provisions. In France the law on non-discrimination is based on the principle of equality, one of the oldest and most firmly established principles of French public law.

The same general rules are to be found in the constitutions of other member states of the Council of Europe, e.g. Denmark (Articles 70 and 71), Greece (Article 4 Sec. 1 and 2), Ireland (Articles 9 and 40), Italy (Articles 3 and 4), Luxembourg (Article 11), the Netherlands (Article 22) and Sweden (Chapter 2, § 15).

In Belgium, any person with a disability who considers that a law, decree, order or administrative decision discriminates against him or her is entitled to bring a case before the relevant Belgian court on the basis of Articles 10 and 11 of the constitution. According to case-law, the constitutional rules of equality and non-discrimination do not preclude the right to treat groups of persons differently if this is based on objective criteria and can be reasonably justified. Such justification must be determined in terms of the purpose and effects of the measure in question; the equality principle is infringed if the means used are disproportionate to the intended purpose.

1.3 Legal effects of written constitutional rules

With regard to the legal effects of such written constitutional rules, a distinction can be made between the effects on the public authorities or institutions and the effects on the private sector.

1.3.1 LEGAL EFFECTS ON PUBLIC AUTHORITIES AND INSTITUTIONS

In countries where an anti-discrimination rule or a rule on equal treatment is to be found in the written constitution, the general view is that public authorities and institutions are bound in the exercise of statutory and administrative powers or, more generally, of executive public powers. This rule is especially relevant in countries with a federal system.

1.3.1.1 Distinctions covered

But if all public authorities and institutions are bound by the constitutional rules, it needs to be ascertained whether the rules prohibit any form of distinction on account of disability or whether they only prohibit the placing of a person with a disability at a disadvantage. It will be remembered that provisions that do not prohibit every form of distinction enable the public authorities to take measures to promote and improve the situation of persons with disabilities.

With regard to the judgement of the German Federal Constitutional Court (*Bundesverfassungsgericht*), it must be considered whether the anti-discrimination rules based on a certain use of the term "discrimination" give any person with a disability a legal right to demand of the public authorities all the measures he/she needs or whether the state is entitled to limit supportive measures if it sees fit. If the state is so entitled, the monitoring of this discretionary power in the various member states of the Council of Europe should be investigated.

In the latest decision of the German Federal Constitutional Court in the field of discrimination with regard to disability, that of 8 October 1997, the Court confirmed its judgement that the conditions of the anti-discrimination rule in Art. 3 Sec. 3 of the German Constitution are also fulfilled if a public authority measure restricts the provision of services for disabled and non-disabled persons alike but has detrimental effects only on persons with a disability. If such a measure is not supplemented by measures of promotion or support to compensate for the different effects on persons with disabilities, the state violates its duty under Art. 3 Sec. 3 in connection with the fundamental principle of a social state as provided for in Art. 20 Sec. 1 of the German Constitution. The measure is constitutional only if the reason for the absence of complementary measures of promotion or support is valid, such as an unavoidable lack of funds, staff or organisational arrangements.

1.3.1.2 Effects on the monitoring of discretionary decisions

If a provision grants a discretionary power to a public authority or institution, the monitoring of the decision (if and how to decide) must cover the fundamental values laid down in the national constitution. In this way a constitutional anti-discrimination rule or equal treatment provision obliges the authority to take into account the interests of persons with disabilities in the same way as other fundamental rights embodied in the constitution. The right of equal treatment for persons with disabilities is not subordinate to other fundamental rights.

1.3.2 EFFECTS ON THE PRIVATE SECTOR

In Belgium, Germany and Switzerland, not only do these constitutional provisions bind public authorities, but also are these rules applicable in the private sector - as a result of the interpretation of private-law principles in the light of the constitution. The interpretation of private-law principles must entitle persons with disabilities to take part in the private sector on the same footing as non-disabled persons.

In this way, decisions like those taken by the German courts in 1980 and 1993 may be avoided. By these decisions, the courts had awarded compensation to customers of a tour operator solely because they had to eat in the same room as persons with mental disabilities. At the time these decisions were taken, the fundamental anti-discrimination rule in Art.3 Sec. 3 had not yet been incorporated in the German Constitution. But the legal protection of the rights of persons with disabilities in the private sector depends on the interpretation private-law principles which may differ in individual cases. Generally, the right of equal treatment for persons with disabilities must also to be taken into account in the private sector.

2. ANTI-DISCRIMINATION RULES OUTSIDE WRITTEN CONSTITUTIONS

General prohibitions of discrimination and rules of equal or preferential treatment can also be found outside written constitutions. In this chapter only provisions of general importance are mentioned. Provisions with importance in only one of the specific policy areas will be dealt with in Chapter III.

2.1 Provisions in Criminal legislation

In some states, penalties are prescribed in criminal legislation to strengthen the application of anti-discrimination provisions and enhance equality of treatment.

2.1.1 FINNISH CRIMINAL CODE

Such a provision is to be found in Chapter 11, Section 9 of the Finnish Criminal Code. Under this clause, an offence is committed by anyone who, in the course of an economic or professional activity, in the performance of a public service, civil service or other public duty or in the organisation of a public entertainment or meeting, places

someone in a manifestly different or weaker position without good reason by virtue of his/her state of health or some other factor such as race, nationality, sex, etc. A separate provision covering unlawful distinctions in the employment sphere is contained in Chapter 47, Section 3.

An unlawful distinction is made when in job advertisements, during the selection of applicants or in employment, a person is placed in a different position without good reason solely by virtue of his/her state of health. The penalty for both unlawful distinctions is a fine or imprisonment for a maximum of six months. It would be interesting to obtain further information on what are regarded as "good reasons" within the meaning of Chapter 47, Section 3.

2.1.2 FRENCH CRIMINAL CODE

In the same way, unlawful distinctions are punishable under Art. 225-1 to Art. 225-4 of the French Criminal Code. An act of discrimination is defined in Art. 225-1 as any distinction made between natural persons (first paragraph) and/or between legal entities (second paragraph) on the ground of health, disability or a comparable factor. Only if such a distinction entails inferior treatment, as defined in Art. 225-2 is it punishable by a fine of up to FRF 200,000 or by imprisonment for a maximum of two years. Inferior treatment according to Art. 225-2 comprises:

- 1) refusing to supply an object or a service,
- 2) hindering the normal exercise of any economic activity,
- 3) refusing to recruit, penalise or dismiss a person,
- 4) making the supply of an object or a service conditional on one of the situations listed in Art. 225-1 or
- 5) making an offer of employment conditional on one of those situations.

If any of these forms of inferior treatment is identified, the distinction based on a disability will be considered arbitrary.

Under Art. 432-7 of the Criminal Code, the penalty is raised to a fine of up to FRF 300,000 and a maximum of three years in prison if the unlawful distinction is committed by a person vested with public authority in the exercise of his/her duties and if the measure consists in denying the enjoyment of a right afforded by law or hindering the normal exercise of an economic activity.

To prevent preferential treatment and special protection for persons with disabilities from being punishable, Art. 225-3 states that the anti-discrimination provisions do not apply to measures of differentiation whose purpose is to guard against the risk of death, threats to the physical integrity of an individual or a danger of work incapacity. Likewise, the anti-discrimination provisions do not apply to measures of differentiation consisting of a decision not to recruit or to dismiss someone on the basis of medically certified unsuitability.

2.1.3 THE NETHERLANDS CRIMINAL CODE

ON 8 MARCH 2000 THE MINISTRY OF JUSTICE SENT A LETTER TO PARLIAMENT ANNOUNCING THAT "HANDICAP" SHALL BE INCLUDED IN THE CRIMINAL CODE OF THE NETHERLANDS (INSTIGATION TO HATE OR OFFENCE).

2.1.4 AUSTRIAN EGVG

Art. IX of the Austrian *Einführungsgesetz zu den Verwaltungsverfahrensgesetzen (EGVG)* makes it an offence to hinder a person's access to public places, buildings or services on account of disability or a comparable factor. Measures taken for "good reason" are not covered. A fine of up to ATS 15,000 can be imposed.

2.1.5 SITUATION IN PORTUGAL

In Portugal, those who do not comply with the requirements of legislation on access to premises are subject to fines ranging between PTE 50,000 and 2,000,000; personnel in public administrations may face disciplinary measures. The Portuguese Criminal Code provides for an increased penalty in the case of offences against persons with disabilities.

2.1.6 SUMMARY

The above-mentioned provisions of criminal legislation ensure the application of anti-discrimination provisions in all branches of the law. In addition, not only are public authorities bound by these rules; individuals are also required to treat persons with disabilities in the same way as non-disabled persons. Moreover, the legal protection of persons with disabilities does not depend on the interpretation of private-law principles in the light of constitutional provisions that might be variable in individual cases.

However, criminal provisions have to permit preferential treatment of persons with disabilities in certain respects. To prevent measures of preferential treatment regarding the various kinds of social, medical and financial support from being punishable, the law has to make explicit exceptions as under Art. 225-3 of the French Criminal Code.

2.2 Provisions in other fields of legislation

2.2.1 IRELAND

In Ireland, there is a new Employment Equality Act of 1998 which outlaws discrimination on nine distinct grounds, including disability. The Act deals with discrimination in all work-related areas, from vocational training to access to employment and employment conditions generally. It specifically allows an employer to

put in place positive measures to promote equal opportunities. An Equal Status Bill is being prepared in order to tackle discrimination in society in the non-employment sphere on the nine distinct grounds - including disability - provided for in the Employment Equality Act of 1998.

2.2.2 UNITED KINGDOM

In the United Kingdom, the Disability Discrimination Act 1995 prohibits discrimination against persons with disabilities in a range of areas, including employment, access to goods, facilities and services and the management, buying or renting of land or property.

Discrimination occurs if a person, for a reason connected to another person's disability, treats the latter less favourably than he/she treats or would treat others to whom that reason does not or would not apply.

Less favourable treatment includes:

- failure by an employer to make reasonable changes to the premises or employment arrangements if these substantially disadvantage an employee with a disability or a prospective employee; or
- failure of a service provider to make alterations to a service or facility which makes it impossible or unreasonably difficult for a person with a disability to use it; refusing to serve a person with a disability; offering a person with a disability a lower standard of service or less favourable terms.

The Act covers persons with disabilities as well as persons who have had disabilities. A disability is defined as a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities.

The Act applies to both the public and the private sector.

Under the terms of the Act, a person who feels that he/she has been discriminated against can refer the matter to an employment tribunal in the case of discrimination in employment or to the courts in the case of discrimination in the provision of goods and services.

2.2.3 GERMAN CIVIL CODE

This Code provides an example of an outdated rule which appears discriminatory. The passage concerning the right of reimbursement contains - in paragraph 828 Sec. 2 - a provision stating that people without hearing and speech are treated as minors in order protect them.

2.2.4 PORTUGAL

Under the Portuguese Civil Code, people suffering from a mental anomaly, or devoid of hearing and speech or sight can be subjected to a judicial interdiction or a legal incapacitation.

3. PREFERENTIAL TREATMENT ARRANGEMENTS

The categorisation applied to anti-discrimination measures (i.e. rules in written constitutions and laws) can also be applied to preferential treatment arrangements.

3.1 Constitutional rules on the care and integration of persons with disabilities

The Constitution of Spain (Art. 49) requires public authorities to pursue a policy of prevention, care, rehabilitation and integration for persons with physical or mental impairments. This is to be seen as a guiding principle of the state's economic and social policy. Under Article 53.3 of the Spanish Constitution, rights stemming from "the guiding principles of social and economic policy" can be asserted before the ordinary courts, in accordance with the law.

Likewise, an obligation for the state to implement a national policy for prevention, rehabilitation and integration of persons with disabilities is laid down in Art. 71 Sec. 2 of the Portuguese Constitution. This rule requires the state to generate and raise public awareness of the need to respect and support persons with disabilities as well as to take responsibility for the actual implementation of their rights. A similar rule is to be found in Art. 63 of the Portuguese Constitution concerning social security with regard to protection in the case of invalidity and reduced work capacity.

According to Sec. 15a of the Finnish Constitution, everyone is entitled to the necessary means of subsistence and care. This provision covers the supply of facilities for persons with disabilities, which is declared as a legal right of the individual.

According to Art. 21 Sec. 2 of the Greek Constitution, the State is obliged to give special care to persons suffering from incurable physical or mental impairments. Sec. 3 of this Article requires the state to adopt special measures for the protection of persons with disabilities.

In Sec. 70 E of Hungary's Act XX of 1949, (Constitution), it is stated that all citizens are entitled to social security and to the support needed for their livelihood in the case of disability not arising through their own fault.

The German Constitution defines in Art. 21 Sec 1 the obligations of a social state. This rule specifically requires the state to provide for the needs of disadvantaged persons, including those with disabilities.

3.2 Legislative rules

Countries that have adopted the active/preventive approach or a policy of preferential treatment have special statutes providing for such measures. Examples are the French law of 30 June 1975, the Swedish Act concerning support and service for persons with certain functional impairments (LSS) and the German Act on severely disabled persons (*Schwerbehindertengesetz*). Countries having adopted the anti-discriminatory approach have also passed specific laws on the subject. But in most countries there is a combination of approaches (see French law of 12 July 1990). A similar situation is to be found in Finland with strong constitutional anti-discrimination rules on the one hand and active measures on the other.

Moreover, some isolated provisions are to be found, including a State's obligation to preferential treatment or offset the disadvantages of persons with disabilities. Examples of such provisions are Section 10 of Book 1 of Germany's Social Code (*Erstes Buch Sozialgesetzbuch*) and paragraph 39 of its Federal Social Assistance Act (*Bundessozialhilfegesetz*).

In the United Kingdom, anti-discrimination legislation has been introduced alongside a wide range of other primary legislation, which affords protection to persons with disabilities and provides for measures aimed at rehabilitation and integration. For example, vocational assessment, vocational rehabilitation and training as well as supported employment are provided for in the Disabled Persons Employment Act 1944. The National Health Services Act 1977 places a duty on the Government to provide a comprehensive health service designed to secure improvement in (i) the physical and mental health of people in England and Wales, and (ii) in the prevention, diagnosis and treatment of illness. Provision for Social Care is contained in the National Assistance Act 1948; Chronically Sick and Disabled Persons Act 1970; Disabled Persons (Services, Consultation and Representation) Act 1986; NHS and Community Care Act 1990 and Carers (Recognition and Services) Act 1995.

4. COMPATIBILITY OF PREFERENTIAL TREATMENT ARRANGEMENTS WITH CONSTITUTIONAL ANTI-DISCRIMINATION RULES

Measures of preferential treatment have to be brought into line with the prohibition of any differentiation and with the observance of fundamental provisions concerning equal treatment for all in national constitutions and laws. Otherwise, the rules providing for promotion and support in respect of persons with disabilities in order to compensate for inequalities might be found unconstitutional by national courts. In the member states which reported, various techniques are used to reconcile measures of preferential treatment with the prohibition of differentiation and the guaranteeing of equal treatment.

4.1 France

One of the oldest and most firmly established principles of French law is the equality of all citizens (*Declaration of the Rights of Man and of the Citizen, 26 August 1789, Déclaration des Droits de l'Homme et du Citoyen*). This fundamental principle of equality precludes all unjustifiable forms of differentiation. Articles 1 and 13 of the 1789 Declaration define the principle of equality. The French Constitution paves the way to preferential treatment of persons with disabilities in order to reduce *de facto* inequalities and compensate for natural disadvantages. As a result, the constitution permits an active policy of support for persons with disabilities through governmental measures. In French law, therefore departures from the principle of equality for the sake of differentiated treatment are accepted as a means of temporarily ensuring equality of opportunity for persons with disabilities and helping the most disadvantaged members of society.

Pursuing the above-mentioned concept of anti-discrimination legislation, two legislative instruments, the Policy Act of 30 June 1975 for persons with disabilities and the Act of 12 July 1990 for the protection of persons from discrimination due to their state of health or disability, were enacted to introduce various measures for persons with disabilities. The promotion and support offered by these texts are mentioned in Chapter III.

4.2 Germany

The anti-discrimination rule in Art. 3 Sec. 3 of the German Constitution does not preclude any preferential treatment of persons with disabilities or any measures to improve their circumstances. Although the rule does not include an exception regarding preferential treatment measures in the form of promotion, support or facilitation for persons with disabilities, these measures are not covered.

The text of Art. 3 Sec. 3. does not cover differentiated treatment based on disability, including the unequal treatment of non-disabled persons compared with persons with disabilities. The only forms of differentiation covered are those disadvantageous for persons with disabilities. Even if a differentiated measure is disadvantageous for persons with disabilities, it is prohibited only if there is no valid reason for the differentiation. Preferential treatment of a person with a disability is acceptable only if its purpose is to compensate for an existing disadvantage. It cannot be accepted if the person with a disability receives promotion, support or facilitation to such an extent that his or her opportunities are better than those of non-disabled persons.

4.3 Canada

Art. 15 Sec. 1 of the Canadian Charter of Rights and Freedoms also prohibits discrimination on the grounds of disability. However, any differentiation aimed at improving an individual's situation is not taken into consideration.

4.4 Spain

The High Court of Justice of Madrid (16 January 1996) stated that preferential parking arrangements for persons with disabilities could not be regarded as discrimination against non-disabled persons. Similarly, the Spanish Supreme Court of Justice (20 April 1993) and the Spanish Constitutional Court (3 October 1994) found that the Spanish quota rule in the public sector was constitutional because it did not discriminate against non-disabled persons. Indeed, they declared that these provisions made the principle of genuine equality feasible and effective and were in accordance with the social and democratic nature of the State.

5. ENFORCEMENT OF ANTI-DISCRIMINATION LEGISLATION AND PREFERENTIAL TREATMENT ARRANGEMENTS

Many persons with certain impairments have difficulty in exercising their right to equal treatment or preferential treatment and in obtaining the promotion and support to which they are entitled. One way of remedying this is to provide in national legislation for measures to help persons with disabilities to enforce their rights and claims.

In Art. 2-8 of the French Code of Criminal Procedure, associations for defending and assisting sick people or persons with disabilities are entitled to enforce rights with the consent of the person concerned or his/her statutory representative. An association may exercise the rights of a third party provided that it has existed for at least five years by the time of the action.

Another example is paragraph 187 of Germany's Administration of Justice Act (*Gerichtsverfassungsgesetz*). It empowers a court to decide whether a person devoid of hearing and speech is allowed to give evidence about his/her own interests. By contrast, any non-disabled person has a right to give evidence. Of course, the court in reaching its decision is bound by Art. 3 Sec. 3 of the German Constitution, but this provision contains at present a reference to unjustified distinction on the ground of disability.

In the United Kingdom, persons with disabilities can enforce their rights under the Disability Discrimination Act 1995 through employment tribunals in respect of the Act's employment provisions and through the courts in respect of the Act's goods and services provisions. Whilst the Act provides individuals with some worthwhile protection, it has significant limitations. The United Kingdom Government's manifesto commits it to supporting comprehensive and enforceable civil rights for persons with disabilities, and to this end the government has set up a Disability Rights Task Force to undertake a wide review of how to secure comprehensive and enforceable civil rights for persons with disabilities. The final report of the Disability Rights Task Force was published in December 1999.

6. Recent and proposed national legislation

In order to show trends in this area, some examples of recent and proposed legislation are given.

6.1 Sweden

In Sweden, two committees of inquiry have been charged with examining and proposing how the legislation on countering discrimination against persons with disabilities and on the treatment of persons with disabilities in different areas can be amended. On the basis of one committee's report, a Bill, a special Act on discrimination against persons with disabilities in working life was passed by Parliament. The Act came into force on 1 May 1999. It contains prohibitions against direct and indirect discrimination. Direct discrimination refers to a situation where a person with a disability is treated less favourably than the manner in which a person without a disability has been, or would be, treated in a similar situation. The expression "similar situation" means a situation where the person with a disability has the same capacities/qualifications as the non-disabled person. But the prohibition also covers cases where the employer can create a "similar situation" and where it can reasonably be required of him to take the appropriate measures. "Indirect discrimination" denotes situations where the employer applies a rule, criterion or procedure that seems neutral but entails particular disadvantages for a person with a disability. These prohibitions cover all stages of the employment process: job application, decision to employ and actual employment. If the employer has discriminated against an employee, he/she can be asked to pay damages for the violation of personal integrity as well as for economic loss.

The second committee of inquiry is still working on an analysis of attitudes towards persons with disabilities. A further committee of inquiry on the question of a ban on discrimination against persons with disabilities in shops, restaurants and other services offered to the public has been set up.

6.2 Belgium

In Belgium, a colloquium was held by the Higher National Council for Persons with Disabilities on 29 November 1996 to lay the foundations for drawing up Belgium's future anti-discrimination legislation.

Following this colloquium, a general anti-discrimination regulation is being prepared by a joint working committee consisting of federal and community officials, who are thus investigating how the principles of Article 13 of the Treaty on European Union¹ with regard to persons with disabilities can be incorporated into Belgian law.

¹ References to provisions of the Treaty on European Union take account of the renumbering affected by the Treaty of Amsterdam, amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts.

6.3 Luxembourg

With a view to the preparation of national legislation the Luxembourg Minister for Persons with Disabilities and Accident Victims arranged for an action plan for persons with disabilities to be drawn up by a co-ordinating body. In this context, the provisions in all the relevant areas are being considered in the light of the special needs of persons with disabilities.

6.4 The Netherlands

In the Netherlands there is a draft law aimed at prohibiting unjustifiable distinctions on the grounds of disability or chronic disease. This text will provide a list of areas and cases where making a distinction is prohibited, as well as situations where the prohibition of distinctions does not apply. Generally speaking, discrimination in favour of persons with disabilities or chronic diseases, as well as any necessary and objectively justified discrimination is treated as permissible.

6.5 Norway

A committee has been set up to study the situation of persons with disabilities in general, including the question of discrimination.

6.6 United Kingdom

In March 1998 the United Kingdom Government announced that Part M of the Building Regulations was extended to include new dwellings.

Under the Disability Discrimination Act 1995, regulations are being introduced that will require all future domestic land-based forms of public transport (buses and coaches as well as trains, including light rail and underground trains, and licensed taxis) to be fully accessible to persons with disabilities, including those who travel in wheelchairs.

The Disability Rights Commission Act received royal assent in July 1999 and the disability rights commission became operational in April 2000. It will work towards eliminating discrimination against people with disabilities and equalise opportunities for them, promote good practice and advise the government.

III. POLICY AREAS EXAMINED

CONCERNING THE POLICY AREAS EXAMINED THE FOLLOWING INFORMATION, WHICH IS NOT EXHAUSTIVE, HAS BEEN PROVIDED.

1. EDUCATION (INCLUDING SCHOOL AND UNIVERSITY EDUCATION)

In the following section, the field of education is separated into school and university education. Here the problem is to identify certain measures that can be considered as discrimination or as preferential treatment.

1.1 Children's day nurseries

In England and Wales, the Early Years Development Plan will provide nursery education for all 4-year-olds, including those with special educational needs.

In some states (*Länder*) of Germany (e.g. Brandenburg and Saxony-Anhalt) children with disabilities have a legal right to attend a day nursery from the age of three, even when attending primary school. In the other German states, children with disabilities are not entitled to a place in a day nursery in such cases unless places are available.

1.2 School education

In the area of school education, the question arising is what types of school are offered and how it is decided which type a child with a disability will attend.

1.2.1 Priority for mainstream education

According to the countries' national reports, there is a school system which consists of ordinary schools, on the one hand, and special schools for persons with disabilities, on the other. In all member States which reported, children with disabilities are taught in ordinary schools alongside non-disabled children as far as possible. Additional lessons as well as psychological and educational assistance are usually provided for children with disabilities. In Portugal, for example, there are special teaching teams for pupils with disabilities, integrated into the normal educational system, while for those integrated into special schools a subsidy is provided to cover additional expenses. Some countries, such as Poland, differentiate between general education, integrated education and special education.

In order to reduce exclusion and segregation to a minimum, national education systems generally seek to integrate children with disabilities into mainstream education as far as possible. A child with a disability should be sent to a special school only if integration into an ordinary school is impossible or no longer possible either because he/she cannot be educated alongside non-disabled children or because it is not possible for the ordinary school to provide appropriate educational and therapeutic support. This priority accorded to mainstream schools is to be found in the education systems of France,

Germany and Spain. Recently the Education Act (*Schulorganisationsgesetz*) of Austria was also amended to comply with the above-mentioned principle. In the Luxembourg education system the 1994 Educational Integration Act put an end to the segregation of children with disabilities. Since then, integration into mainstream schools also has had priority, supported by psychological and therapeutic measures. In England and Wales, the Education Act 1996 requires that any child with special educational needs, including those with disabilities, be educated in mainstream primary and secondary schools if that is what his or her parents wish, provided that this is suitable for the child's needs and consistent with the efficient education of other children and the use of resources. Similar provisions apply in Northern Ireland and Scotland.

Usually a flexible approach is used which may be defined as total integration into general schools if possible; otherwise, at least partial integration, if possible on the basis of each individual's type of disability and particular situation, examples of which are to be found in France (Education Act of 1989), Luxembourg (1994 Act of Educational Integration) and the Netherlands.

Under the school organisation laws of the states of Germany, parents' right to choose is provided for. Likewise, Sec. 30 of Act LXXIX of 1993 on public education in Hungary stipulates that the parents may choose the educational institution of a child with a disability.

In France, the importance of integrated school education in combination with a high standard of special schools is emphasised. There are special schools for pupils with disabilities as well as special classes in ordinary schools for children with disabilities. Moreover, pupils with disabilities are integrated into general classes in ordinary schools. This individual or collective integration has general priority, and the special classes are an interesting intermediate stage designed to cater for the particular needs of pupils with disabilities by having them educated in general schools and thus promoting their integration.

In Estonia, pursuant to the Pre-school Children's Institution Act of 1993, local authorities have to provide all children residing in their area with an opportunity to obtain a basic education. Special arrangements are made for children with disabilities.

1.2.2 ENFORCEABILITY OF THE RIGHT TO INTEGRATED EDUCATION

Even though national education systems give priority to the integration of children with disabilities into mainstream schools, a child with a disability or his/her parents are not always entitled to enforce a general right to be educated in a mainstream school. But at least the responsible education authority must always decide where a child with a disability is to be educated.

1.2.2.1 United Kingdom

In the United Kingdom, the Local Education Authority (LEA) decides whether a child with a disability is able to attend a general school. LEAs can draw up statements setting out the special educational needs of pupils with complex difficulties. If this evaluation leads to the conclusion that placement in a general (mainstream) school is not appropriate for the child, the Local Education Authority is entitled to place the child in a special school. Parents can apply to the independent SEN (Special Educational Needs) tribunal for a decision/arbitration in case of disagreement and be informed of the appeals procedures available.

1.2.2.2 Germany

In Germany, the Federal Constitutional Court (*Bundesverfassungsgericht*) set limits on 8 October 1997 to the right to receive integrated education. It endorsed the idea of integrated education in general but accepted the argument of the school administration involved in the case that the special assistance necessary for a person with severe disabilities was beyond the financial and organisational abilities of an ordinary school; the person concerned was therefore sent to a special school. Any decision of a school administration to remove a child from mainstream education and send him/her to a special school can be considered discriminatory according to Art. 3 Sec. 3 of the German Constitution. Differentiation between a child with a disability and other pupils is disadvantageous for the former as he/she may have to travel further to school, as well as give up his/her usual environment. Education in an ordinary school also helps to integrate persons with disabilities into society. Consequently, general segregation of all pupils with disabilities to special schools would be a violation of Art. 3 Sec. 3.

It was stated by the Court that in this case the authorities had done all they could and that distinctions were justified if supported by sufficient proven reasons. Such a reason would be, for example, the inability of a mainstream school to provide the educational, psychological and orthopaedic support needed by the child with a disability owing to a lack of financial, organisational or human resources. The state is required to provide appropriate support only in so far as it can be provided at acceptable cost.

1.2.2.3 Norway

The decision of the Norwegian Supreme Court in the "Malvik case" seems to include the main principles as mentioned above. The Supreme Court stated in this decision that although the pupil in question had not received as much educational help and support as she felt she needed, she had nevertheless obtained what she was legally entitled to. The state's obligation to provide educational services, help and promotion was limited to what could be given within the limit of acceptable technical, personnel and organisational expenses.

1.2.3 MANDATORY PROMOTION OF DISABLED CHILDREN IN MAINSTREAM SCHOOLS

As a general principle, the state is obliged to give pupils with disabilities in mainstream schools the best conceivable educational, pedagogical and psychological support demanded by their special situation. However, the authorities can have regard to current financial, human and organisational resources.

In some states, however, various texts are aimed at the provision of effective support for pupils with disabilities in mainstream schools. In this context, the acknowledgement of sign language as a common language in Finland, France (1990) and Sweden (1981), should be mentioned. Moreover, the teaching in sign language for deaf and dumb pupils in mainstream schools is obligatory in Finland and Sweden. In the United Kingdom, the emphasis on mainstream provision is written into national legislation (see paragraph 1.2.1) and the overwhelming majority of children receive their education in mainstream schools (only about 1 % attend special schools).

1.2.4 Enforceability of the right to special education

According to the reports, only in Spain is a person with a disability entitled (under Law 13/82) to special educational assistance or education in special schools.

In France, there are facilities specially designed for certain types of impairment and disability.

In the United Kingdom, the Education Act 1996 requires schools and Local Education Authorities (LEAs) to identify and make provision for children with special educational needs, including those whose needs arise from disabilities as defined in the Disability Discrimination Act 1995. Education legislation gives all children a right of access to the National Curriculum. LEAs provide for children with special needs, including those whose level of need is sufficient to warrant a statutory statement of special educational needs, in maintained mainstream and special schools, as well as schools run by charitable or independent organisations. If parents cannot reach agreement with a local authority, they can appeal against the local authority's decision to the Special Educational Needs Tribunal established under earlier legislation (Education Act 1993).

Norway has provisions for special education in the ordinary school laws, giving the right to supplementary measures for those in need of them. It was the application of these provisions - and the amount of support that could be claimed thereunder that was under consideration in the "Malvik case" referred to above.

1.3 University education

In the area of university education, examples of provision of access and support are to be found.

1.3.1 ACCESS TO UNIVERSITY EDUCATION

In Spain, according to Article 7 of Royal Decree 1060/92 of 4 September 1992, 3% of university places are reserved for students with a degree of disability of 65% or more or with total language or hearing impairment. There are also special rules concerning examinations for persons with impairments.

Portuguese legislation provides for a specific percentage of university places to be reserved for young persons with disabilities.

Section 2, Sub-Section 5 of the German Framework Act for Universities (*Hochschulrahmengesetz*) requires universities to take account of the special needs of students with disabilities.

There are no specialist Higher Education Institutions (HEIs) for students with disabilities in the United Kingdom, and so in effect all arrangements are "mainstreamed". As bodies independent of the Government, HEIs make their own decisions on admissions and are responsible for their own premises, including the improvement of physical access to buildings and provision of learning support for students with disabilities where this is considered necessary. In common with other educational institutions, they are currently exempted from Part III of the DDA (the provision of goods and services), which means that they are not legally obliged to make provision for students with disabilities. However, under Part IV, the DDA imposed new statutory duties on the Higher Education Funding Councils for England and Wales requiring them to have regard to the needs of students with disabilities and make it a condition of grant that HEIs publish disability statements showing clearly what facilities each one offers to students with disabilities. Statements will be required every three years, but they can be updated annually if there is a significant change in arrangements. They should describe current policy and provision, as well as future activity and policy development. In Northern Ireland the same duties are imposed under existing grant conditions or legislation. In the Further Education sector, the Further and Higher Education Act 1992 places a statutory duty on the Further Education Funding Councils (FEFC) for England and Wales to secure adequate further education provision in England and Wales. Similar arrangements apply in Scotland. In so doing, the FEFCs are required to have regard to the needs of students with learning difficulties and/or disabilities. LEAs also have a statutory duty to provide all types of full-time and part-time further education suitable to the needs of persons over the age of 16 insofar as the FEFCs are not obliged to provide such education.

1.3.2 SUPPORT FOR UNIVERSITY EDUCATION

To enable persons with disabilities to attend university courses and sit university examinations, a variety of preferential treatment measures have been adopted by member states.

1.3.2.1 Scholarships

In the field of scholarships, the needs of persons with disabilities are taken into account by, for example, waiving of the age-limit for support (Austria, Germany), partial exemption from the repayment obligation (Germany) or a higher scholarship rate on account of special needs (Austria, Belgium and Germany). In the Netherlands, the general rules for scholarships normally apply, but the special situation of students with disabilities is taken care of by other financial and organisational means.

In the United Kingdom, there is assistance for technical aids, help with learning and defrayal of additional costs. Disabled Students Allowances (DSA) are available to full-time students on degree and sub-degree higher education courses to cover the cost of specialist equipment (up to GBP 4,055 for the duration of the course), non-medical personal helpers (up to a maximum of GBP 10,250), additional travelling expenses (not subject to a cash limit) and a general allowance to cover costs not met by other allowances (up to GBP 1,350). From autumn 2000, these allowances are to be extended to part-time students studying at least 50% of a full-time course (the allowance for non-medical personal helpers will be pro rata).

In Sweden, the government issues every year an allocation decree stipulating the percentage of the budgetary appropriation which universities must allocate to students with disabilities. In 1994/95 this was 0.5% of the budget.

In Poland, a person with a disability who is a full-time student can receive a special scholarship intended for students with disabilities from state budget resources as from 1 January 1998.

1.3.2.2 Support during examinations

During examinations a student with a disability may be entitled to extra time, and the examination method can be adjusted to the special disability of a candidate; for example, a student who is deaf and without speech can be examined in writing. Such provisions are to be found in the university systems of Belgium, Germany and Portugal. In France, a system of measures has been adopted to deal with tests and examinations for students with disabilities. In Belgium, this support is not limited to the examination period but is provided during the entire course.

The Netherlands' Universities Act calls on boards of examiners to compensate for a candidate's disadvantages by providing special dispensation. Boards of examiners have to decide what kind of dispensation to give. A comparable provision is to be found in paragraph 27 sec. 5 of the Austrian Common University Act.

1.3.2.3 Exemptions from examination requirements

The Portuguese university system permits exemptions from the requirement of sitting university examinations by allowing students with a disability not to take certain tests.

In Germany, no exemptions from examination requirements can be made as a uniform academic examination standard must be maintained. Only for apprenticeships do the Vocational Training Act (*Berufsbildungsgesetz*), (paragraphs 44 and 48) and the Handicrafts Regulation Act (*Handwerksordnung*), (paragraphs 41 and 42b) permit certain exemptions. In Austria, the Common University Act prohibits exemptions from examination requirements.

2. MOBILITY (INCLUDING ACCESS TO PUBLIC TRANSPORT)

In order to improve mobility of persons with disabilities, especially as far as access to public transport is concerned, anti-discrimination rules as well as preferential treatment arrangements have been used by the member states which reported.

2.1 Anti-discrimination rules

There are legal provisions which oblige providers of public transport to enable persons with a disability to have access to means of transport without hindrance. Such measures are mentioned in the reports of the French, German, Polish, Spanish and United Kingdom delegations.

2.2 Preferential treatment

However, the general tendency is to introduce regulations which, in certain circumstances, provide financial support for measures that improve the mobility of persons with disabilities and thus foster the use of public transport.

2.2.1 FARE REDUCTIONS

Fare reductions on public transport for persons with disabilities (and to some extent for those helping them) are provided for in Austrian, Belgian, French, German, Luxembourg, Polish and Spanish legislation. In the United Kingdom, fare reductions are not obligatory, but local authorities have the power under the Transport Act of 1985 to give concessionary fares to persons with disabilities; in addition, the Access to Work programme, established under the Employment and Training Act 1973, permits defrayal of the extra cost of getting to work (e.g. taxi fares or other transport costs) in the case of people who, because of their disability, cannot use public transport. German legislation contains distinctions based on the degree and type of disability; thus, only persons with a degree of disability of at least 50 % as well as mobility handicaps are entitled to free local transport under the Severely Disabled Persons Act (*Schwerbehindertengesetz*).

2.2.2 FINANCIAL SUPPORT FOR THE PURCHASE, ADAPTATION AND USE OF VEHICLES

Some states provide physically disabled persons with financial support for the purchase, adaptation and use of private vehicles, which can then be used or driven by those persons (Austria, Belgium, Germany, Poland, Portugal and the United Kingdom). Part of the support takes the form of a tax reduction.

In Germany, for example, persons with a 50 % degree of disability are exempt from the motor vehicle tax. In Luxembourg, total or partial exemption from the motor vehicle tax is granted to persons with a disability level of at least 30 %. In Spain, all persons with disabilities are exempt from paying this tax. In Belgium, certain persons with mobility impairment are exempt from paying value added tax (VAT) on the purchase of a car for their own use. In Finland and Spain, the VAT on the purchase of a motor vehicle is reduced. In Austria, persons with severe disabilities are exempted from the motor vehicle tax. In Portugal, persons with physical or multiple disabilities whose incapacity exceeds a certain degree are exempt from motor vehicle tax upon acquiring a car for their own use. In some countries, the grant of tax reductions or exemptions depends on the presence of certain kinds of disability, whereas in others it is not.

In the United Kingdom, the “Motability Scheme”, set up in 1977, is designed to help persons with disabilities obtain vehicles on favourable terms. Persons who are paid the mobility component of the Disability Living Allowance at the higher rate are able to use this to lease a vehicle from Motability. Under this scheme, cars are available on either lease-hire or hire-purchase terms, and powered wheelchairs and scooters are available on hire purchase. Currently over 350,000 benefit claimants receive help through the scheme, and a total of some 1 million cars have been made available since the scheme began. Motability also administers the Mobility Equipment Fund (MEF), which is a United Kingdom Government fund set up in 1991 to finance vehicle adaptations to allow mobility for persons with severe disabilities as either car drivers or passengers. The MEF is funded by the Department of Social Security at the rate of GBP 3 million per annum, and the average individual grant made is in excess of GBP 8,000. The Access to Work Programme can provide assistance with adaptations to a vehicle if the vehicle is essential to enable a person with a disability to get to work.

In Norway, persons with disabilities may, on certain conditions, be able to obtain a car under the National Insurance Scheme.

2.2.3 STATE SUBSIDIES

State subsidies are granted for private and public investment in public transport to meet the needs of persons with disabilities (France, Germany, the Netherlands, Poland and Spain).

In Spain, mobility allowances and compensation for transport costs are granted to persons with at least 33 % of disability (see Royal Decree 383/84).

2.2.4 Tax relief

In Germany, taxable persons with disabilities receive a higher reduction in their income tax to compensate for additional costs. Another kind of charge reduction exists in Austria, where the cost of a road licence (*vignette*) is reimbursed to persons with disabilities. There is no charge for a "vignette" for persons with disabilities in France.

2.3 Improvement of mobility

IN AUSTRIA, FRANCE, GERMANY, LUXEMBOURG, POLAND, PORTUGAL, SPAIN AND THE UNITED KINGDOM, FOR EXAMPLE, THERE ARE SPECIAL ROAD TRAFFIC RULES WHICH PROVIDE PREFERENTIAL PARKING FOR PERSONS WITH DISABILITIES.

Here it should be noted that the High Court of Justice of Madrid stated that preferential parking arrangements for persons with disabilities do not imply unlawful discrimination against non-disabled persons.

In Luxembourg and Norway, special forms of transport are provided for persons with disabilities. In Norway, persons with disabilities have to pay the same fare for special transport as non-disabled persons for public transport within the same local authority area.

In Austria, Belgium, France, Germany, the Netherlands, Portugal and the United Kingdom, for example, railway companies provide assistance to persons with disabilities for using trains if their journey is announced in advance.

3. ACCESSIBILITY OF THE BUILT ENVIRONMENT (INCLUDING PUBLIC BUILDINGS, PRIVATE BUILDINGS OPEN TO THE PUBLIC AND PRIVATE BUILDINGS)

In this area, obligations are imposed on certain persons or institutions. At the same time, financial support is provided for voluntary measures designed to deal with the special needs of persons with disabilities.

3.1 Anti-discrimination rules

Rules in this area cover some but not all kinds of buildings.

3.1.1 TYPES OF BUILDING CONCERNED

In some of the countries which reported there are mandatory construction regulations aimed at making public buildings accessible to persons with disabilities. These minimum standards vary in legal status among the reporting countries. In Austria and Germany they are laid down in standards (ÖNORMs in Austria; DINs in Germany)

which do not give direct rights to persons with disabilities but are incorporated in other rules or principles. In Germany, only the State of Berlin provides in its legislation for a legal right to free access to public buildings for any person with a disability; but only new and reconstructed buildings are covered.

In other countries, there are legal provisions containing minimum standards, i.e. facilitating access to public and private buildings open to the public (Belgium, Estonia, France, Poland, Portugal and Spain). In the Netherlands, for example, all public buildings must guarantee easy access for persons with disabilities. But the statutory provisions on this subject do include many exceptions, with the result that persons with disabilities have no general assurance that all buildings are accessible. In France, measures provided for in an Act of 1991 also apply to private buildings in general. In Portugal, a set of Technical Standard Rules has been published with the aim of improving access to buildings open to the public.

In Belgium, a permit for a building open to the public is issued only if the accessibility needs of persons with disabilities are met. The architect, the builder and the owner of a cinema have been successfully sued on the ground that the auditorium was not accessible for persons with disabilities. The region and the city where the cinema was located were also penalised for issuing the building permit.

In the United Kingdom, part M of the Building Regulations makes provision for the design and construction of new facilities accessible for persons with disabilities. Following consultation it was announced that Part M would be extended to new dwellings. Part M does not deal with existing buildings or the removal of barriers. Also in the United Kingdom, the Disability Discrimination Act 1995 requires reasonable changes to be made to suit employment circumstances. Such changes could include alterations to an employer's premises. As from October 1999, service providers must take reasonable steps to change practices, policies or procedures which make it impossible or unreasonably difficult for persons with disabilities to use a service, and there will be a duty on service providers to overcome physical barriers by providing their service via a reasonable alternative method. As from 2004, service providers will have to take reasonable steps to remove, alter or provide reasonable means of avoiding physical features that make it impossible or unreasonably difficult for persons with disabilities to use a service.

The Austrian Introductory Act to the Administrative Procedure Acts (*Einführungsgesetz zu den Verwaltungsverfahrensgesetzen – EGVG*) prohibits, in Art. IX, the prevention of accessibility or any discrimination against a person on the ground of disability in respect of access to public buildings. It would be interesting to know what measures are covered by this provision.

As a first provision of the European Community in this area of legislation, a directive was issued which requires member states to incorporate into their legislation rules guaranteeing accessibility of lifts for persons with any disabilities.

3.1.2 Exceptions for existing buildings

The rules and regulations of Austria, Belgium, France, Germany, Poland and the United Kingdom regarding accessibility for persons with disabilities apply only in the case of new buildings and the reconstruction of existing buildings.

According to the information available, only Spain requires, under Title IX Section 1 of Law 13/82 (Mobility and architectural barriers), that the construction, extension and renovation of public and private buildings, public thoroughways, parks and gardens should be carried out in such a way that they are accessible for and may be used by persons with disabilities, and that existing facilities, buildings, parks and gardens should be gradually adapted. Accordingly, a decision of 9 May 1986 of the Supreme Court of Justice stated that a public authority was obliged to provide accessibility. Because of Art. 14 of the Spanish Constitution, architectural barriers hindering persons with disabilities must not remain in place. The situation is similar in France and Portugal. In Poland, funds are also available for the removal of such barriers.

In Hungary, Act. LXXVIII of 1997 on the development and protection of the man-made environment requires public buildings to be free of obstacles. This means, according to sec. 2, that a building must be made accessible for every person with a disability.

3.2 Preferential treatment

Supportive measures are to be found in the legislation of some countries. Essentially these measures concern subsidies for building or reconstruction to meet the needs of persons with disabilities in public as well as private buildings, as detailed below:

- New private buildings or dwellings meeting the needs of persons with disabilities are subsidised on varying conditions (e.g. in Germany if the buildings/dwellings fulfil the DIN-standards and if they are reserved for persons with a lower income; in the Netherlands and the Walloon Region of Belgium if they guarantee free accessibility for every person with a disability; in Luxembourg, support is provided only for persons with physical impairments).

- The reconstruction of private buildings or dwellings to meet the needs of the owner with a disability is subsidised by various insurance and social benefit institutions (e.g. the care insurance and the common social benefit system in Germany; in Belgium; the different public organisations; for France, see the Law of 30 June 1975). The United Kingdom's Disabled Facilities Grant, administered by local authorities and based on income-related testing, is able to assist with the cost of adapting private housing.

- In the Walloon and Brussels Regions of Belgium, partial defrayal of removal costs is granted if the new house/dwelling meets more fully the needs of the person with a disability than the former house/dwelling.

- The reconstruction of universities to meet the needs of students with disabilities is supported by certain funds (i.e. in Germany, high-cost measures are subsidised by the state; in Sweden, a certain percentage of the university budget must be set aside to meet the needs of persons with disabilities).

The Finnish Disabled Persons Equality Act established a right for the most severely disabled people to receive certain services and forms of assistance for accessibility purposes. However, municipalities have some discretion as to the content of these services and the ways of organising them.

4. VOCATIONAL GUIDANCE, VOCATIONAL TRAINING AND EMPLOYMENT

It is in the area of vocational guidance, vocational training and employment that by far the most rules and regulations are to be found for removing existing discrimination, preventing possible discrimination and promoting the integration of persons with disabilities.

It should be noted, however, that in none of the member states which reported does a person with a disability have an individual right to be employed.

4.1 Anti-discrimination rules

There are a number of legal systems which have anti-discrimination laws.

According to the Disability Discrimination Act 1995 of the United Kingdom, discrimination by an employer is unlawful in all aspects of employment, e.g. recruitment, receipt of benefits, training, promotion as well as selection for redundancy and dismissal. This also means treating a person with a disability less favourably for a reason relating to the disability, and without justification. Employers with fewer than fifteen employees, as well as certain other sectors such as the armed forces and jobs on board aircraft, are excluded.

This Act also makes it unlawful for training providers to discriminate against persons with current or past disabilities, either when they apply for or while they are undergoing training. A training provider would be practising discrimination if he/she were to treat a person with a disability less favourably on account of the disability without sufficient reason.

Persons with a disability who feel that they have been treated unlawfully can appeal to an employment tribunal. The service of the Advisory, Conciliation and Arbitration Service is available for conciliation.

In German labour law, no anti-discrimination rule exists that is comparable to paragraph 611a of the German Civil Code (*BGB*) prohibiting discrimination on the grounds of gender. Such a provision in labour law, calling for equal treatment of persons with and without disabilities during the period of job seeking, is one of the demands of non-governmental organisations (NGOs). Paragraph 45 of the Severely Disabled Persons Act (*Schwerbehindertengesetz*) prohibits employers from deducting any social allowance an employee with a disability receives from his or her wages.

In Hungary, Act. XXII of 1992 on the Labour Code prohibits negative discrimination on various grounds and at any rate in any situation unrelated to employment. It would be interesting to know if cases of disability are covered by this rule.

In Norway, an anti-discrimination clause (especially with regard to recruitment and dismissal) was recently added to the Labour Environment Act, but it does not cover discrimination on the grounds of disability.

In Sweden, a proposal for an anti-discriminatory law against persons with disabilities in working life was recently presented. It prohibits both direct and indirect discrimination. Direct discrimination refers to a situation where a person with a disability is treated less favourably than the manner in which a person without a disability has been, or would be, treated in a similar situation. The situation is considered similar if the person with a disability has the same capacity/qualification as the non-disabled person with whom he/she is compared. But the prohibition also covers cases where the employer can adjust the situation and can reasonably be expected to do so. Situations where the employer uses a rule, criterion or procedure that seems to be neutral but that leads to particular disadvantages for the person with a disability are defined as indirect discrimination. The prohibition covers all stages of employment: job application, decision to employ and ongoing employment. An employer, who has discriminated against an employee, can be ordered to pay damages for the violation of personal integrity as well as for financial loss.

In Poland the regulation prohibiting discrimination against persons with disabilities was included in the Act of 1974 – Labour Code by virtue of amendment of this Act carried into effect in 1996.

France's 1990 Act prohibiting discrimination against persons with disabilities has been included in the Labour Code.

All these rules follow the "classical" approach towards the idea of anti-discrimination.

4.2 Preventive measures

A distinction can be made between general and individual preventive measures.

4.2.1 GENERAL PREVENTIVE MEASURES

Statutory provisions aimed at changing the labour market for persons with disabilities in general can be termed as general preventive measures. For example, such measures do not influence the hiring of an individual person with a disability, but they do affect the general employment opportunities of persons with disabilities.

4.2.1.1 Quota arrangements

Preventive measures are to be found in a number of legal systems in the form of a quota arrangement, which means that companies exceeding a certain size have to employ a certain minimum number of persons with disabilities. This applies to employers with at least 16 employees in Germany, at least 20 employees in Hungary, at least 25 employees in Austria and Poland, and at least 50 in Spain. In France, there is a 6 % employment quota which applies to firms with more than 20 employees. Luxembourg differentiates between the size and the kind of the firm or institution. In the public sector the rate is generally 5 %, whereas in the private sector it is at least one employee with disability status for every 25 employees, 2 % of the total number of jobs in enterprises employing at least 50 staff and 4 % of the total number of jobs in enterprises employing at least 300 staff.

At this point it should be noted that in two decisions of the Spanish Supreme Court of Justice (20 April 1993) and the Spanish Constitutional Court (3 October 1994) the Spanish quota rule in the public sector was declared constitutional, as it would not involve discrimination against non-disabled persons.

IN BELGIUM, QUOTAS ARE APPLIED ONLY IN PUBLIC ADMINISTRATION.

In certain countries an equalisation levy has to be paid in cases where this obligation to employ persons with disabilities is not met – amounting to a sanction for not fulfilling the duty. The receipts resulting from this equalisation levy are placed in a promotion fund to be used solely for structural measures in favour of persons with disabilities in the countries which reported.

Under this system imposing a legal obligation to employ persons with disabilities, there are additional incentives to foster preferential employment of persons with disabilities who encounter special problems on the labour market. Thus, apprentices with disabilities (Austria and Germany) and persons in wheelchairs for example may count for two or even three working places to be filled by persons with disabilities.

4.2.1.2 Subsidies for employing persons with disabilities

In some countries, instead of or in addition to anti-discrimination rules, part of the employment costs of a person with a disability are covered by state subsidies. This system of subsidisation is aimed at compensating for the possibly lower output of

persons with disabilities employed in the open occupational environment. In Belgium, employers receive subsidies only if they guarantee that persons with disabilities will receive the same wages as non-disabled persons.

In Spain, employers are given a subsidy of ESP 500,000 and a grant of ESP 150,000 for concluding a permanent job contract. A ESP 550,000 subsidy is given if a traineeship for a person with a disability is changed into a permanent job.

COSTS OF ADAPTING WORKPLACES TO MEET THE NEEDS OF PERSONS WITH DISABILITIES MAY BE COVERED, AT LEAST IN PART, BY PUBLIC INSTITUTIONS (AUSTRIA, BELGIUM, GERMANY, POLAND AND PORTUGAL). IN LUXEMBOURG, THE COSTS OF WORKPLACE ADAPTATION IN CONNECTION WITH A VOCATIONAL INTEGRATION MEASURE ARE TOTALLY OR PARTIALLY REIMBURSED BY THE DISABLED WORKERS DEPARTMENT (SEE ACT OF 12 NOVEMBER 1991 ON WORKERS WITH DISABILITIES).

Subsidies also may be provided from the receipts from the equalisation levy payable by employers who do not fulfil their duty to hire persons with disabilities. In Austria, premiums from this source are paid to companies employing persons with disabilities as apprentices (Disabled Persons Employment Act).

Spanish Royal Legislative Decree 1/95 makes provision for a reduction of 50% in the social security contribution for employers who provide training contracts for workers with disabilities. The same 50 % reduction in an employer's social security contribution is granted to an employer who readmits a person with a disability to the same job as the one in which he/she was employed before (see Royal Decree 1451/83). In Spain, companies employing persons with disabilities also receive preferential treatment in the case of government contracts (see Act 13/95).

In Poland, employers obtained additional tax reductions up to the end of 1999, if they achieved a quota of 7% of workers with disabilities (on a full-time basis).

In Austria, Poland, Portugal and Spain (up to ESP 400,000), persons with disabilities may receive grants or loans for setting up their own business.

In Portugal, there are supportive measures to enable persons with a certain degree of disability to work at home.

A special approach was recently adopted in Ireland, where people who have received a Disability Allowance or a Blind Person's Pension for a certain period may keep part of these payments for a certain time when taking up a newly created job. They also may keep additional benefits. Employers providing newly created jobs may also qualify for an exemption from their social security contributions for two years. All this is part of a programme of employment support administered by the National Rehabilitation Board.

4.2.2 INDIVIDUAL PREVENTIVE MEASURES

Statutory provisions are termed individual preventive measures when they are aimed at improving the individual position of persons with disabilities. In this way, the impairments of such persons are compensated for in order to enable them to meet the demands of the labour market.

4.2.2.1 Special or additional vocational training and vocational guidance

In the area of vocational training and vocational guidance, persons with disabilities are covered by some kinds of preventive individual measures in so far as they have a right to special vocational guidance and to special courses in vocational and further education, for example in Austria, Germany, Luxembourg (see Act of 12.11.1991), Poland, Portugal and Spain (Royal Decree 631/93). These measures are part of the various countries' social or benefit systems.

In Germany, employers are obliged to give preferential treatment to employees with disabilities in the case of vocational training at work (see paragraph 14 Sec. 2 of the Severely Disabled Persons Act (*Schwerbehindertengesetz*). If they do not meet this obligation, they must pay a penalty (paragraph 68 Sec.1 No. 7 of the same Act).

In the United Kingdom, persons with disabilities have for the most part immediate access to employment and training programmes designed for persons who have been unemployed for 6 months or longer. Vocational guidance over and above that provided by mainstream jobcentre services is available through the Employment Service's national network of Disability Service Teams. Within these teams, Disability Employment Advisers offer advice on employment and training, arrange vocational assessments and provide access to employment rehabilitation, to work and to supported employment programmes.

4.2.2.2 Sheltered workplaces

Most countries provide employment and/or training in sheltered workplaces for persons with disabilities who are - at least for the time being - unable to find a job on the ordinary labour market because of the degree of their disability.

In Germany, a person with a disability unable to find a job has no general right to a place in a sheltered workshop. Such a right is limited to persons with disabilities for whom the ordinary vocational guidance arrangements are not sufficient; the person with a disability is expected to be at least able to produce a minimum amount of usable work. To improve the legal position of persons with disabilities working in sheltered workshops, it is provided in legislation that such persons should be treated like employees working elsewhere. They must also receive appropriate wages for their work, and they can enforce their labour-law rights in the labour courts.

In Austria, persons with disabilities who are employed in sheltered workshops are paid according to the scale laid down in the collective agreement applicable to their particular field of employment. They are treated therefore like non-disabled workers.

In Austria and Germany, companies that give contracts to sheltered workshops receive premiums or similar advantages.

In France, there is a system of Centres for Help in Employment (*Centres d'Aide par le Travail - CAT*) and sheltered workshops (*Ateliers Protégés - AP*); their principal objective is to provide employment for persons with disabilities and to help them to secure a job on the general labour market. These sheltered workshops and the Centres for Distribution of Work at Home (*Centres de Distribution de Travail à Domicile - CDTD*) provide work and employment for persons with disabilities according to their reduced work capacity. Both the APs and the CATs have adopted a six-month trial period to test the working capacity of a person with a disability and in some cases even to declare his or her working capacity insufficient for the facility. The remuneration guarantee of persons in APs and CTDSs varies between 90 % and 130 % of the Minimum Income (*Salair Minimum Interprofessionnel de Croissance - SMIC*), whereas the guarantee in the case of CATs is between 100 % and 110 % of the SMIC; this guarantee means that persons with disabilities are paid according to their work and that the difference in relation to the SMIC is covered by the state. The difference between a CAT and an AP is that a CAT usually caters for persons with disabilities who need a considerable amount of assistance and promotion. They are not treated as employees but more as people who need and receive services; there is therefore a staff in the facility to care for them. Persons with disabilities working in APs – unlike those in CATs - are treated as part-time employees. Their contract is treated as a labour contract. The Labour Code as well as the collective agreement of the given branch of industry are applicable; this is the case if the employer is a private enterprise as well as if it is an association (Art. L. 323-32 of the Labour Code). The wage may be reduced according to the disability but not below 35 % of the SMIC (Art. D.323.25.2 of the Labour Code). The income is then increased by the above-mentioned guarantee.

The question of providing employment and training in sheltered workshops also concerns Poland, where a financial aid and exemption system for sheltered establishments is in operation.

In Spain, there are sheltered workshops known as Special Employment Centres for persons with disabilities whose work capacity is not less than 33 % of the usual work capacity. If their work capacity is below 33 %, they may enter an Occupational Centre.

In Luxembourg, comparable arrangements for the equal treatment of persons with disabilities in sheltered workshops will be introduced in the near future.

One problem with such sheltered workshops, as pointed out in the past, is that no part-time arrangements are available. Women with disabilities are thus especially disadvantaged if they have children to look after. Another problem concerns wages for

persons with disabilities working in these workshops; generally there is a rule calling for fair wages in relation to "ordinary" employment and setting a minimum which should not be below the national minimum wage.

4.2.2.3 Other special or additional assistance for overcoming barriers to employment

Some countries have legislation that makes special provision for persons with disabilities. In the United Kingdom, for example, the Disabled Persons Employment Act provides for sheltered employment in respect of persons with severe disabilities.

4.3 Supportive measures

As mentioned above, an employed person with a disability cannot be left without special statutory protection according to his/her particular needs. Because of this, the legislation of most countries lays down arrangements to protect the special interests of persons with a disability in an ongoing employment relationship; for example, in Portugal public-sector employees with disabilities have flexible working hours.

4.3.1 PROTECTION AGAINST DISMISSAL

Employees with disabilities have special protection in the event of dismissal under Austrian, French and German law. An employee with a disability can only be dismissed with the approval of a regional public authority (*Behindertenausschuß* in Austria, *Hauptfürsorgestelle* in Germany). The public authority has discretionary power in this case; it has to weigh the employee's interest in remaining in employment, on the one hand, and the employer's interest in dismissing the employee, on the other. In some cases, such as the closing of a factory, the authority is limited in its decision. Owing to this requirement of approval by a public authority, a person with a disability is automatically protected in the event of dismissal and does not need to bring an action against the employer. In any event, action against the employer is often difficult.

In the United Kingdom, the Disability Discrimination Act 1995 ensures that dismissal, including compulsory early retirement, of a person with a disability for a reason relating to the disability would need to be justified and the reason for it would have to be one that could not be removed by any reasonable adjustment. For example, it may be justifiable to terminate the employment of an employee whose disability makes it impossible for him or her to perform the main functions of the job any longer, if an adjustment (such as a move to a vacant post elsewhere in the business) is not practicable or cannot reasonably be expected of the employer.

4.3.2 MEDICAL PROTECTION

IN FRANCE, EMPLOYERS CANNOT TERMINATE A LABOUR CONTRACT BEFORE OBTAINING THE OPINION OF THE COMPANY DOCTOR. THEY ARE ALSO REQUIRED TO INVESTIGATE THE POSSIBILITY OF REDEPLOYMENT. IF THIS IS IMPOSSIBLE OR THE WORK INCAPACITY IS PERMANENT, THE SITUATION IS TREATED AS REDUNDANCY AND THE EMPLOYEE RECEIVES THE CONTRACTUAL SEVERANCE PAY.

The Austrian and German labour laws provide for additional holidays and place restrictions on night work and/or overtime to protect employees with disabilities from being overtaxed. Moreover, employers are obliged by the German Severely Disabled Persons Act (*Schwerbehindertengesetz*) to employ persons with a disability in accordance with their work capacity (paragraph 14 Sec. 2). However, this rule does not give a person with a disability any statutory claim to a particular kind of work.

Similar rules apply in Poland, where an annual two-week rehabilitation stay is provided for in respect of persons with disabilities; certain groups of persons with disabilities are also entitled to a shorter workday without any decrease in pay. Some provision for additional days holiday also exists in Germany.

4.3.3 THE WORKING ENVIRONMENT

The Norwegian Working Environment Act contains regulations that require employers to adapt working places to the needs of the employees, including those with disabilities. In the United Kingdom, employers must under the Disability Discrimination Act 1995, consider the relevant needs and make "reasonable adjustments" to working arrangements and premises where these are substantially disadvantageous for a person with disabilities. A comparable rule can be found in the German Severely Disabled Persons Act (*Schwerbehindertengesetz*), but this duty is limited by the financial capacities of the employer. The Luxembourg Grand-Ducal Regulation of 13 June 1979 on safety in the civil and local government service emphasises that the design of workplaces should take account of the needs of persons with disabilities.

4.3.4 SPECIAL REPRESENTATION OF INTERESTS OF DISABLED PERSONS IN FIRMS

According to German law, employers must appoint a person specifically responsible for questions concerning persons with disabilities. In Austria and Germany, a special delegation of persons with disabilities has to be appointed in companies where at least a certain number of persons with disabilities are employed; like the works council, this body is expected to safeguard the interests of employees with disabilities. In relation to the employer, it has the right to be informed and to be involved in decision-making. For example, it must be heard prior to the dismissal of an employee with a disability.

5. TECHNICAL AIDS

In most countries the cost of installing technical aids in vehicles, houses/dwellings and workplaces as well as the cost of orthopaedic items and other aids is principally covered - at least in part - by social security funds, similar institutions or the state budget. The extent to which technical aids have been provided in the different member states cannot be assessed this stage.

As an example of a measure of preferential treatment, the purchase and hiring of orthopaedic items in Germany are subject to a lower rate of value-added tax; this also applies in Portugal. Although VAT as applied in the United Kingdom is a broad-based tax on consumer expenditure generally, VAT zero-rating nevertheless applies to the supply of wheelchairs, hoists, chair lifts and stairlifts, certain alarms and motor vehicles, sanitary appliances, medical and surgical appliances and other equipment and appliances designed solely for the use of persons with disabilities.

Germany's Federal Constitutional Court declared in its decision of 8 October 1997 that owing to its constitutional role or mandate, the state should provide sufficient technical aids for persons with disabilities to enable them to take part in life with dignity. A similar principle is laid down in the French Constitution with reference to the previously mentioned 1789 Declaration.

Although the state is obliged to provide technical aids needed by a person with a disability, it can be inferred from the above that the state does not have to compensate for all existing disadvantages, but that it should provide as many technical aids as possible at an acceptable financial, personal and organisational cost. The extent of the state's provision of such aids should satisfy at least the fundamental needs.

HOWEVER, MOST STATES HAVE DISCRETIONARY POWERS AS TO WHAT KINDS OF TECHNICAL OR ORGANISATIONAL AIDS TO PROVIDE. A CHOICE MAY BE MADE BETWEEN THE VARIOUS KINDS OF EFFICIENT AIDS AVAILABLE.

An explicit rule along these lines can be found in the 1992 Finnish Act on the Status and Rights of Patients, which also covers persons with disabilities. The Act stipulates that the persons covered are entitled to health and medical care within the limits of resources available at the time. In Norway, technical aids are part of the entitlements under the National Insurance Act.

6. LEISURE, SPORTS AND CULTURE

The statutory measures to be found in this area include discounts for TV and radio licence fees (Austria, Belgium, France, Germany and the United Kingdom) and a target for sub-titling programmes as well as a requirement for the Independent Television Commission to draw up a code on promoting the understanding and enjoyment of programmes by persons with sensory disabilities (United Kingdom). A similar measure also exists in Portugal.

7. Sexual discrimination (including sexual violence, violence against persons in institutions, the right to found a family and the right to maternity and paternity)

In this area of legislation neither explicit anti-discrimination rules nor equal treatment provisions are to be found. No legal restrictions on the sexuality of persons with disabilities are perceptible.

7.1 The right to maternity and paternity

In none of the member states which reported is a person with a disability generally precluded from the right to maternity or paternity. In some countries, however, statutory provisions concerning sterilisation are to be found.

7.1.1 SPAIN

According to Article 156 of the Spanish Criminal Code, the sterilisation of incompetent persons with severe mental impairments is permitted on condition that it is authorised by a judge.

7.1.2. GERMANY

In Germany, too, the sterilisation of persons with disabilities is allowed on certain conditions. In cases where a person with a disability is unable to understand the possible reasons for sterilisation, a special guardian of the person has to agree to sterilisation and the sterilisation has to be authorised by a guardianship judge. But it can only be authorised on the basis of a medical, social, psychological and pedagogical report provided by an expert on the justification for sterilisation. In paragraph 1905 Sec. 1 of the German Civil Code, the acceptable reasons for sterilisation are expressly listed. A sterilisation measure cannot be based on any reasons other than the following:

1. the existence of a specific danger of a pregnancy,
2. because a pregnancy would be a danger to the life and health of the person with a disability,
3. pregnancy cannot be prevented by other measures, such as contraception.

7.1.3 FRANCE

In France, sterilisation is not mentioned in the Criminal Code, but is generally seen as mutilation. Sterilisation is lawful only if medically necessary and if there are no other less severe alternatives.

7.1.4 United Kingdom

All requests (without medical reasons) for the sterilisation of a person with a disability who cannot give informed consent to the operation should be heard before a High Court judge. The interests of the person with a disability are represented by the Official Solicitor.

7.2 Right to marriage

Nevertheless, the civil law of a number of states demands full legal capacity in the case of marriage or other family matters. This condition may not be met by all persons with disabilities. Legally incapacitated persons in tutelage or guardianship must be represented for the purpose of entering into a marriage contract by a guardian or a guardianship judge, who has to give authorisation.

7.3 Sexual violence, and violence against persons in institutions

Some national criminal codes expressly prohibit sexual violence against persons with impairments as well as violence against persons in institutions. The amendment to the German Criminal Code, which came into force on 4 April 1998, provides for some strengthening of the rules dealing with such violence. If a person has any sort of sexual contact with a person with a disability in his or her care, he/she is punishable by a maximum of five years in prison (see paragraph 174c of the German Criminal Code as well as the Portuguese Criminal Code). In the case of the sexual violation of a person who does not resist because of an impairment the penalty can rise to ten years' imprisonment (see paragraph 179 of the German Criminal Code). The Portuguese Criminal Code provides for an increased penalty in the case of offences against persons with disabilities.

Comparable provisions are included in Sec. 7, 9, 21, 27 and 29 of the United Kingdom Sexual Offences Act 1956 and in Sec. 128 of the United Kingdom Mental Health Act. The rules differ only in the severity of the penalty.

8. Income (from the viewpoint of economic independence and equality of opportunity, excluding social allowances)

With regard to the incomes of persons with disabilities, it should be kept in mind that the provisions of national social security systems and social benefit systems are excluded from this synoptic report. The situations of the states that address the concept of preferential treatment and compensation for existing disadvantages can therefore be only partially compared.

8.1 Anti-discrimination rules

In a number of the countries which reported there are provisions prohibiting the payment of a lower wage solely on the ground of the reduced working capacity of persons with disabilities (see Austria, Germany and Luxembourg).

In the United Kingdom, the employment provisions of the Disability Discrimination Act 1995 apply to all areas of employment, including terms and conditions of service. This does not mean that offering a less favourable contract is automatically illegal. Such a contract may be justified if there is a material and substantial reason and if no reasonable adjustment can be made to remove that reason. For example, if a person had, owing to a disability, a significantly lower output than other employees doing similar work, even after an adjustment, and that person's work was of neither lower nor higher quality than that of other employees doing similar work, the employer could be justified in reducing the person's pay in proportion to his or her lower output if it affected the value of his or her work to the business.

8.2 Preferential treatment

Preferential treatment outside social allowances is to be found in the form of tax reductions, minimum income guarantees, decreased charges and financial incentives.

8.2.1 TAX REDUCTIONS

Some countries provide for tax reductions in respect of the incomes of persons with disabilities (see Belgium, France, Germany, Luxembourg, Poland, Portugal and Spain).

8.2.1.1 General reductions

Under German tax law (see paragraph 33 b of the Income Tax Act), the general deductions (standard amount) in income tax range from a minimum of DEM 600 (if there is a minimum degree of disability and of 25 %) to a maximum of DEM 7,200 (for a minimum degree of disability of 90 %). These deductions are transferable from an unemployed child to his/her parents.

Under Belgian income tax law, higher income tax reductions apply to taxpayers whose household includes a person with a disability of at least 66 %.

Under Spanish tax law, comparable provisions are to be found. Tax reductions applicable to taxpayers with disabilities or to dependants with disabilities are also provided for under Luxembourg tax law.

In France, persons with disabilities (of at least 40 %) are granted a family-related tax rebate.

In the United Kingdom, persons can claim a tax allowance of up to GBP 1,280 if they are registered as blind and are unable to perform any work for which eyesight is essential.

8.2.1.2 Reductions to compensate for higher costs

Furthermore, according to some national tax laws persons with disabilities can receive certain tax reductions to compensate for higher costs due to their special needs. In this way, the costs of medical care, rehabilitation measures, spa treatment, technical aids, special transport, driving tuition or school fees resulting from special educational coaching are deductible.

Other kinds of tax reduction to be found include a reduced road tax for the vehicle of a person with a disability, a reduction in real estate purchase charges and a lower rate of value added tax for the purpose of private motor vehicles by persons with disabilities or for the purchase or hiring of orthopaedic items as mentioned above.

8.2.1.3 Reductions for parents of children with disabilities

In certain circumstances day nursery costs for children with disabilities are tax deductible (in Germany, up to DEM 4,000 a year for the first child and up to DEM 2,000 a year for each further child).

The German Income Tax Act also provides for tax deductions of up to DEM 1,800 a year if help in the household is needed. According to paragraphs 33a Sec. 3 and Sec. 4, 10 Sec. 1 No. 8, a need for help in the household is assumed to exist if a child of the taxable person has a disability of least 45 %.

Furthermore, under German tax law some reductions for parents are available. Thus, the general tax reduction (standard amount) for every child under 18 can be claimed regardless of age in the case of a disability, as long as the child has no personal income of more than DEM 12,000 a year (paragraphs 62 et seq of the German Tax Act). But it must be pointed out that the calculation of the child's income also takes account of subsidies granted by way of a social allowance. Because of this, the tax reduction provided for in paragraphs 62 et seq do not come into effect very often. A tax deduction of up to a DEM 11,000 a year can also be claimed if the child is in education and lives in separate accommodation. A deduction of up to DEM 6,000 a year in respect of church tax can be claimed.

In Belgium and Luxembourg, the child allowance is higher if the child has a disability.

8.2.2 MINIMUM INCOME GUARANTEES

In Belgium, France, Hungary, Luxembourg and Spain, a certain minimum income is guaranteed. In Austria, persons with disabilities who are employed in a sheltered workshop are paid according to the scale laid down in the collective agreement applicable to their particular field of employment. They are therefore treated like non-disabled workers.

In Spain, Royal Decree 383/84 provides for a minimum income subsidy that is designed to meet the basic needs of those who lack means of subsistence and are not in a position to work because of their disability (which implies 65 % degree of disability).

In Belgium, benefits may be granted for persons with disabilities to cover their additional integration costs and their reduced earning capacity; these benefits are not subject to tax. This is also the case in Austria. A similar situation is to be found in France, where the income of a person with a disability may be supplemented by cash benefits.

In the United Kingdom, persons with severe disabilities employed through the Supported Employment Programme are paid the rate for the job, not according to their level of productivity.

8.2.3 REDUCTION IN CHARGES

In Germany, persons with disabilities are protected against a loss of income due to their need for medical care by a total or partial reduction in co-payments.

8.2.4 FINANCIAL PROMOTION

Under German building legislation, a person with a disability receives financial support in the form of subsidies or loans for building his/her own house or dwelling.

9. MEDICAL CARE

The national reports do not refer to any special rules or regulations in this respect for persons with disabilities. Generally, it can be seen that countries provide medical care as well as rehabilitation for all persons in need thereof, whether or not they have disabilities. Special needs may be taken into account (for example in Poland).

10. OTHER SERVICES AVAILABLE TO THE PUBLIC (INCLUDING INSURANCE)

10.1 Social protection and other benefits

According to national provisions on social protection or social security, persons with disabilities have in certain circumstances a special right to state pensions and long-term care benefits. Parents of children with disabilities are also entitled to special benefits. Some common social benefits are paid for a longer term than in the case of non-disabled persons, e.g. the German pension for orphans.

Generally, persons with disabilities are covered by public health insurance in the ordinary way. In Germany, children with disabilities are, during their education, covered by the health insurance of their parents, regardless of their age, if they are unable to support themselves.

In Estonia, there is a Bill on social benefits for disabled persons that is aimed at providing cash benefits to compensate for the higher expenses due to a disability.

10.2 Insurance

Persons with disabilities are faced with private insurance problems which depend on the type of disability. The Belgian report mentions problems concerning motor insurance. In France, Germany and Portugal, private and mutual insurance companies may practise risk selection when the health factor predominates.

11. ACCESS TO INFORMATION (INCLUDING INFORMATION TECHNOLOGY)

Little information on relevant anti-discrimination rules or on provisions for promoting access to information is available.

Persons with disabilities may be entitled to a special discount on telephone charges (Belgium, Germany and Poland) and to special telephone equipment according to their type of disability, e.g. hearing and speech impairments (Germany, Poland and the United Kingdom).

In Belgium and Germany, persons with disabilities have a right to reductions in telecommunication, radio and television license fees.

The German Postal Service transports books in Braille free of charge. Similarly, the Belgian Postal Service is obliged to reduce charges for persons with disabilities; there are also reductions in the charge for transporting of books in Braille.

In the United Kingdom, the Information Line set up to provide information on the Disability Discrimination Act (DDA) makes available a wide range of free booklets on the Act, all of which are available in Braille and on audio-tape. The rights of access to goods and services contained in part III of the Act are being introduced over a period of

time. From October 1999, service providers have had to take reasonable steps to change practices, policies or procedures which make it impossible or unreasonably difficult for persons with disabilities to use a service and will be required to introduce auxiliary aids or services to facilitate access. These provisions also cover access to information.

In Estonia, all legislative texts on the relevant institutions for persons with disabilities provide for the right to detailed information, especially with regard to the available benefits and services and the rights of persons with disabilities.

PART 3: ANALYSIS OF THE POSITIONS OF INTERNATIONAL NON - GOVERNMENTAL ORGANISATIONS

The summary presented in this part reflects the hearings held with and comments made by certain international non-governmental organisations (INGOs) to the Working Group on legislation against discrimination of persons with disabilities (P-RR-LADI). As such, it represents the views of the INGOs that participated in the consultation process, not those of the Working Group as a whole.

I. Principles and observations

In general, the INGOs heard by the Working Group base their analysis of discriminatory situations encountered by persons with disabilities on the following principles and observations.

There are currently discrepancies in the relationship between social trends in industrialised countries (in the European area) and the position of persons with disabilities with the result that the latter are subjected to unequal treatment for no reason. This is the case even where equal treatment is both justified and feasible in practical terms.

The fundamental rights set out in various declarations, charters and international conventions (those of the United Nations and its agencies, the Council of Europe and the European Union) must therefore be recognised and applied to persons with disabilities. These rights include access to culture and to leisure and sporting activities.

This objective can be achieved only by consolidating the concept of full, active citizenship encompassing the rights and duties of each individual. Citizens with disabilities must not be stigmatised by special provisions.

INGO representations to states in the area of non-discrimination are still at an early stage. According to the INGO contributions, collective or joint (inter-INGO) action has not yet been organised. However, individual organisations claim to have embarked on an internal process of reflection with regard to non-discrimination.

INGO contributions make it clear that persons with disabilities do not form an homogeneous group. A distinction must be made between two different groupings. The first consists of persons in situations of extreme physical or mental dependence who require appropriate assistance and care. This group includes persons whose disabilities prevent them from representing themselves. The second grouping consists of persons who, despite their disabilities, are able to operate autonomously as full, active citizens, provided that recognition of citizenship goes hand in hand with measures in various areas and that society acknowledges the citizenship of persons with disabilities.

INGOs urge the authorities to provide autonomy for the latter group and protection for persons in situations of extreme dependence, who are considered to suffer most from discriminatory situations.

II. Anti-discrimination laws

Most of the INGOs consider it necessary to draft new anti-discrimination laws with the active participation of persons with disabilities acting through their representative organisations.

The first measure proposed consists in incorporating a prohibition of discrimination against persons with disabilities into national constitutional texts. A definition of non-discrimination in high-level legislation would make it possible to bring state legal systems into line with one another so as to harmonise procedures for identifying actions and situations that discriminate against persons with disabilities.

The second measure proposed by the INGOs is therefore the introduction of specific enforceable laws concerning individuals, institutions and states whose actions lead to *de facto* situations impeding the full exercise of citizenship by persons with disabilities.

Legislation should therefore encompass:

1. action against those who cause or participate in discriminatory acts or situations;
2. the right of persons and organisations representing persons with disabilities to appeal to the courts;
3. procedures and arrangements for the settlement of disputes by the courts.

Some believe that the law should enable persons with disabilities to become independent consumers and taxpayers as a means of attaining full citizenship. Others are seeking, through collective action by representative organisations, to support individuals and families with disabled members so that they can play a constructive role in society.

In general, the INGOs see the introduction of anti-discrimination legislation as a way of implementing the principle of equal opportunities, thus paving the way for the right to equal treatment. In practical terms, for persons with disabilities in situations of extreme dependence this means introducing legislation on preferential treatment designed to reduce inequalities; for others, it means an opportunity to live like everybody else, provided that compensatory measures are implemented so as to enable them to participate fully in society. Compensatory measures must not be confused with preferential treatment.

III. Other strategies for eliminating discrimination against persons with disabilities

INGOs' goal in this area is to develop mechanisms to combat prejudice, so as to modify negative images of persons with disabilities.

It is important to raise awareness among the public, institutions (schools, universities, etc.) and employers in order to change attitudes.

IV. Specific areas

The INGOs that participated in the consultation process expressed a particular interest in the following areas:

1. Accessibility

Measures should be adopted to make areas and services that are open to the general public accessible to persons with disabilities (by adapting transport, housing and public parks, gardens, footpaths, etc.).

INGOs demand the introduction of special signs - harmonised between states - for buildings and transport (including highways and motorways), as well as legislation making access for persons with disabilities to public and private buildings mandatory.

2. Education and training

Certain INGOs believe that integrating children and teenagers with disabilities into the ordinary school system is the best way of enabling them to participate in community life. It gives them the opportunity, once they are adults, to play a responsible, productive role in society.

The integration of children and teenagers with disabilities into the ordinary school system is also a means of combating prejudice; it paves the way for new forms of socialisation which have previously been rejected owing to the implementation of segregationist measures such as specialised education.

The ideal of one society for all implies integrated education rather than special education, which should be used only as a last resort for children and adolescents in situations of extreme dependence.

The provision of adequate education presupposes the adaptation of high-quality teaching programmes to the needs of children and teenagers with disabilities; compulsory supplementary training courses must be available for all teachers. Attendance at such courses should be part of teachers' basic duties.

In accordance with the principle that vocational training should be available to all, measures aimed at recognising vocational qualifications and skills must be adapted to the specific difficulties encountered by persons with disabilities.

3. Employment and new technologies

In order to enable persons with disabilities to escape the economic dependency engendered by social security and welfare systems, measures must be taken to promote employment.

Such measures should be taken in partnership with employers.

Principles such as equal treatment, equal access to vocational training and career development must be applicable to persons with disabilities on the same basis as to other workers.

In an effort to combat prejudice and change attitudes, specific employment support measures should be introduced to offset the integration difficulties faced by persons with disabilities and prevent discriminatory behaviour.

New technologies (NTs) can facilitate access to employment, apprenticeship and training, as they help to integrate persons with disabilities into society. Although NTs can partially offset handicaps, they may also lead to greater isolation.

This applies particularly to persons with limited capacity for abstract thinking who are unable to understand the world of signs introduced by the new computer technologies.

New technologies must be adapted to these challenges. They must be made accessible to all in order to minimise exclusion and enable as many people as possible to take part in community and economic life.

4. Medical care

The INGOs' positions on health care focus on:

pharmacological abuses in the case of persons in situations of extreme dependence;
the isolation of such persons in specialised hospital units (psychiatric hospitals);
the lack of information on the care and treatment those persons are given.

5. Sexual discrimination

With regard to sexual discrimination, sterilisation and the physical and sexual abuse to which women with disabilities are exposed are the most reprehensible forms of discrimination.

PART 4: CONCLUSIONS

Easing and furthering the inclusion of persons with disabilities into the mainstream of society may be pursued in a number of ways. The participating states seem to employ three legal approaches in particular: anti-discriminatory legislation, preferential treatment and compensatory measures.

Anti-discriminatory legislation takes a concept of equality as its point of departure, the discriminatory element being when someone is wrongfully denied something or treated differently because of his/her disability.

Preferential treatment may take a variety of forms, such as the different quota systems which exist in a number of countries.

Compensatory measures consist of various rules and regulations aimed at compensating for a disability.

Anti-discriminatory regulations and compensatory measures may co-exist. It is possible, for example, to have an anti-discrimination rule applicable to cases of non-accessibility alongside building regulations aimed at promoting accessibility.

However, it was proved difficult to categorise measures neatly as, in practice, a combination of these approaches is often employed.

Human rights, respect for human dignity and democratic principles are all arguments in favour of the principle of non-discrimination against persons with disabilities. The Working Group noted that whilst responsibility in such matters generally rested with each state, the great majority of participating countries stressed the need for statutory measures to eliminate discrimination against persons with disabilities. The participating countries stressed the need to involve persons with disabilities and/or their organisations in the preparation of anti-discrimination measures. Such measures as are implemented should be supported by requisite judicial and other resources.

No uniform pattern concerning the legal instruments to be enacted could be identified, nor did such a pattern appear desirable. Taking into account the differing degrees of receptivity of the countries concerned, the principal measures which the Working Group thought offered a way forward were:

the imposition of an outright ban on discrimination either through general or specific legislation;

preferential treatment aimed at eliminating obstacles to full participation by persons with disabilities in society, either through mainstreaming or compensatory measures;

a change in attitudes: the principle of equality of opportunity must not only win widespread public acceptance, but must also be perceived as self-evident. A legal ban on discrimination may constitute a landmark measure in this respect.

These three types of measure could co-exist.

With reference to Council of Europe *Recommendation No. R (92) 6 on a coherent policy for people with disabilities*, the Working Group suggested that the following rights should also be included:

the right to a standard of life comparable to that of other citizens;
entitlement to all the necessary compensatory measures;
equality of access to all levels of the education system as well as to vocational training, the labour market, the physical environment, communication and information;
the right to integrity of the person and to independent living.

The Group also suggested that any programme of action aimed at eliminating discrimination should include the following lines of action:

improved quality of life through an approach centred on the individual;
removal of psychological, physical and technical barriers;
participation by persons with disabilities in the process of independent living;
support for the families of persons with disabilities;
information and awareness-raising aimed at changing attitudes among the general public.

The Working Group's conclusions could therefore be summarised as follows:

Discrimination based on a physical, mental, sensory or psychological disability must be prevented on the ground of respect for human dignity.

Persons with disabilities face discrimination in different spheres. Equal opportunities must be fostered as far as possible through counter-measures (prohibition of discrimination) or through positive action (affirmative action, mainstreaming, public awareness-raising) or through a combination of the different kinds of anti-discrimination measure.

It is for Council of Europe member states to implement these principles and create the conditions for their application, in co-operation with persons with disabilities and/or their organisations.

**APPENDIX 1:
VARIOUS ASPECTS OF DISCRIMINATION:
REFLECTIONS OF THE WORKING GROUP**

Discrimination might be described variously as classifying or distinguishing between individuals or (which is more relevant in the context of this exercise) as treating one person more or less favourably than another person. More favourable treatment can be described as positive discrimination, less favourable treatment as negative discrimination.

Discrimination by action and omission

Less favourable treatment may involve actually doing something. For example, dismissing an employee with a disability because he/she is sometimes off work on account of his/her disability when the amount of time taken off is little more than that taken by other employees; or in a restaurant, compelling a person with a disability to sit out of sight of other customers. However, discrimination can also arise where there is failure to do something, such as not allowing guide dogs into a shop.

Direct and indirect discrimination

Discrimination can be either direct, as in the first example above, or indirect. Indirect discrimination arises where there is a requirement or condition which affects one group of people more than another - for example, not allowing animals into a shop discriminates indirectly against persons with visual impairments. Indirect discrimination might also be described as enforcing a disproportionate disadvantage or a disparate impact.

However, it is debatable whether a distinction between direct and indirect discrimination is helpful in the context of disability. Establishing that particular actions or omissions have a disproportionately disadvantageous impact on one particular group compared with another is not necessarily simple. For example, with regard to sexual discrimination it can be difficult to establish the relevant groups of men and women for the purpose of determining whether there is a disproportionately disadvantageous effect on one sex and to measure such an effect. Such difficulties are even greater in respect of disability because of the greater number of comparison criteria (persons with and without disabilities, persons with different disabilities; same disability but different effects, etc.).

Justification

The concept of more or less favourable treatment inevitably entails making comparisons. This raises particular difficulties when discrimination is defined in relation to disability. Very often, persons with disabilities, will not, by virtue of their disability, be in a similar position to non-disabled persons.

Moreover, disability is not homogeneous. The range of both types and degrees of severity of disability is extensive. Therefore, when considering a definition of discrimination in relation to persons with disabilities it is necessary to have regard to such concepts as justification, reasonableness and (the need for) compensatory action or adjustments.

In discussing the question of justification, it is relevant to remember that, whilst discrimination can be positive or negative, in common parlance the world is closely associated with prejudice and adverse treatment. From this viewpoint it can be argued that “discrimination” cannot be “justified” - supporting it is defending the indefensible. However, the difficulty is rather one of vocabulary than of concept, as it is generally accepted that there are circumstances in which less favourable treatment would not be discriminatory. For example, whilst there might be some dispute about the precise degree of eyesight that is required for a person to be able to drive, it is unlikely to be disputed that someone with a severe visual impairment cannot drive and that refusal to issue a driving licence to someone in these circumstances would be justified and hence non-discriminatory. However, refusing to employ a person in a wheelchair to work at a computer on the ground of his/her disability would not be justified because the person does not need to be able to walk in order to operate a computer. Such action would therefore be discriminatory. A service provider may be justified in not providing the same kind of service to a person with a disability or not altering the way in which he provides a service if by doing so he/she would endanger either that person or other people, i.e. non-provision for legitimate health and safety reasons. What these examples also show is that a substantial and material (i.e. relevant) reason is a prerequisite for justification.

Qualification

The concept of “qualification” is another way of approaching the same issue. Applying this concept to the above driving licence example, the argument would be that being able to see is an essential requirement for driving, and that the absence thereof cannot be overcome or compensated for. A person who is unable to see is consequently not qualified to drive. Therefore, it is not discriminatory to refuse a driving licence to someone who is blind. Similarly, an ability to walk is not an essential requirement for a person working at a computer and therefore, in terms of his/her disability, a wheelchair user would be “qualified” for such employment. Denying such employment to someone in a wheelchair on the ground of his or her disability is therefore discriminatory.

Compensatory action

However, discrimination in the context of disability also concerns disparity. If disparity is not addressed, disability disadvantages people. Addressing disparity involves envisaging compensatory measures, which can also be described as adjustments or accommodations. The range of possible compensatory measures will of course vary, according to individual situations and to the nature and severity of a disability. For example, compensatory action might be something as simple as allowing a guide dog on to premises from which animals are normally excluded, or something more complex such as the redesigning of premises. Other examples include provision of, or adaptations to, equipment; provision of other forms of support, such as readers for persons with visual impairments or translators for deaf persons; adaptations to working methods and conditions, such as flexible hours; changing some of the duties of a job to adapt the job to a person's disability; providing information in accessible forms; and changing or adapting policies. This list is not intended to be exhaustive.

Is it reasonable/realistic?

A compensatory measure may be possible but the question also arises as to whether it would be reasonable for such a measure to be taken. Clearly this will depend on the circumstances of each individual case and raises questions of cost, benefit and impact on other people. For example, it would clearly be reasonable to expect an employer or service provider to take compensatory action that could be carried out easily and cheaply and would fully overcome the barrier to employment or to access to their service in the case of a person with a disability. On the other hand, it may not be reasonable to expect an employer or service provider to take compensatory action that is difficult and expensive and might not have the desired effect. What might be reasonable to expect of a large organisation might be unreasonable to expect of a small one. What might be reasonable to expect of an organisation in sound financial health might be unreasonable to expect of an organisation of similar size facing financial difficulties. It may also be unreasonable to expect costly compensatory action to be taken even in respect of a severely disadvantaged person if such action would only slightly mitigate disadvantage.

Turning to the question of the impact of an action on other people, health and safety considerations are of relevance here, and are likely to be fairly clear-cut - it would not be reasonable, nor indeed justifiable, to take compensatory action that would endanger a person with a disability or other people. However, other questions are less straightforward - for example, in cases where a balance should be struck between the conflicting rights of individuals.

Another facet of the issue of "reasonableness" is the degree of disadvantage faced by a person with a disability. It might not be reasonable to demand compensatory action if the degree of disadvantage is very small.

In reality the possible combination of variables is almost endless, and therefore any definition of discrimination has to include not only some concept of reasonableness but also a reference to the circumstances of each individual case.

CONCLUSION

A definition of discrimination in respect of disability should reflect recognition of the fact that it is about equality. But it should avoid treating everybody in the same way and allow for the diversity of the nature and of the severity of disabilities and the consequent restrictions and barriers faced by persons with disabilities. It therefore needs to provide a way of addressing such restrictions and barriers whilst recognising that they cannot all be overcome in all circumstances and that there has to be some limit on a requirement to take such action.

This suggests a definition which, in non-legal language, might read as follows:

“Discrimination occurs when a person with a disability is treated less favourably than someone else for an unjustifiable reason related to his/her disability. Less favourable treatment includes, *inter alia*, failure to take such steps as might reasonably be expected in the particular circumstances in order to overcome the barriers or disadvantages arising from a person’s disability”.

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