



ASSOCIAÇÃO PORTUGUESA DE DEFICIENTES

Largo do Rato, 1 B – 1250-185 Lisboa

EESC meeting | Right to non-discrimination

October 7, 2022

Portugal ratified the Convention on the Rights of Persons with Disabilities in 2009, but since 2006 it already had a Law Prohibiting Discrimination on the grounds of Disability and Aggravated Health Risk (Law nº46/2006, of 28 August), regulated by Decree-Law nº34/2007 of February 15, which determines the competent bodies for the instruction of the administrative offence procedure.

First of all, it is important to clarify that we consider discrimination to be all forms that limit or prevent people with disabilities from accessing goods and services on an equal footing.

We consider that the right to equality and non-discrimination enshrined in the Convention on the Rights of Persons with Disabilities does not exist when:

Education

The lack of human resources to monitor children with educational needs in the classroom does not in any way guarantee equitable access to inclusive education. Although there is a reduction in the class when a child is signaled, the existence of only one teacher does not allow the development of all children at the same time, the needs of each one are varied and for this reason there must be monitoring in the classroom to assess and monitor the child's progress together with their teacher.

The transition from school to active/professional life also leaves a lot to be desired. Most young people finish regular education without any decent schooling. If many situations are dependent on and support from third parties, there are many other situations that result from the fact that there are no answers or that there is no access to other answers. The answers, especially for caregivers, go through Activity and Training Centers for Inclusion, current CACI, where for the most part, there is only a daily cycle of activities to occupy the time. In addition, the number of places for these centers is limited.

Vocational training is segregating and very limiting, it does not promote quality education for later integration into the labor market.

Employment

There are more and more companies integrating people with disabilities, largely because of legislation, which requires compliance with employment quotas in the private sector (Law nº4/2019, January 4), but which are unaware of the reality of schooling for people with

disabilities. More and more offers are seen with a very high degree of demand, from higher education to experience, which, in large part, has not yet existed due to lack of opportunities.

On the other hand, we have the public administration, which has increased the number of people with disabilities working in its services, but it is not possible to assess whether this increase is due to existing workers in the Public Administration who acquired a disability, or if it occurred through new hires.

It should be noted that access to employment is limited by several factors: poor quality education and training, difficulties in accessing public roads and transport, lack of equipment for access to employment, among others.

One of the major objectives over time is to ensure that people with disabilities are not perceived as subsidy-dependent, but for this it is necessary to create policies to encourage employability and not condition or differentiate people in accessing support measures. Now, the State did precisely the opposite with the creation of the social benefit for inclusion, which, although it is a form of financial support for people with disabilities, has a low value: the base component - €275.30, is only effectively granted to those with 80% or more disability. Those who have between 60% and 80% are dependent on their income. We consider that it is true discrimination to divide access to support by degrees of disability.

On the same line, we see this segmentation occurring in the recent Retirement Law for People with Disabilities (Law nº5/2022, of 7 January), where it is only possible to benefit from an early regime without penalties, who has more than 80% of disability.

Accessibility

Legislation on technical accessibility standards has existed for over 20 years and we continue to have obstacles in physical access, communication, information and goods and services. By means of Decree-Law no. 163/2006, of 8 August, which revoked Decree-Law no. 123/97, of 22 May, the entities responsible for supervising compliance with technical standards have been identified, to know:

- To the National Institute of Rehabilitation (INR) regarding the duties imposed on central public administration entities and public institutes that involve the nature of personalized services and public funds;
- The General Inspectorate of Finance (IGF) regarding the duties imposed on local administration entities;
- Municipal councils regarding the duties imposed on individuals.

The European Union has approved directive 2019/882 of the Parliament and of the Council, which provides that all products and services that are made available in any European state must respect a set of accessibility rules, so that they can be used to their fullest potential by anyone, regardless of whether or not they have a disability, from 2025 onwards. Examples: a payment terminal, an automatic teller machine, a machine for issuing transport tickets, a ticket dispenser for registration or attendance, a box for access to television channels or a digital television

receiver, even an electronic book reader. Portugal was one of the countries that has not yet transposed this directive into its legal framework.

To address the lack of adaptations in housing, the State promoted a program in 2018 (Decree-Law no. 37/2018, of 4 de may) housing solutions for people who live in undignified housing conditions and who do not have the financial capacity to bear the cost of accessing adequate housing. Although the program is available, the municipalities need to apply to the IHRU (Housing and Urban Rehabilitation Institute). This application presupposes that the Municipality has developed a local housing strategy, identifying the housing needs and conditions of its inhabitants, which unfortunately does not exist in most municipalities. When asked about the program, many started to build the local strategy, so the effective application would only be presented after the strategy was finalized. As we well know, it takes months or years to carry out this work, so people, particularly those with disabilities, will have to wait to see their needs suppressed.

Another more recent measure was within the scope of the Recovery and Resilience Plan (PRR), namely the Housing Intervention Program (PIH), integrated in Component 3 – Social Responses, Investment RE-C03-i02: Accessibilities 360º 2021-2025, which includes works and adaptation of housing spaces that have people with disabilities residing in the houses, whether or not they are the owners. To access the program, they must inform the municipality of this, since they are responsible for submitting the application. This program comes disguised with various impositions:

- The Municipality is not obliged to present the candidacy requested by the citizen;
- The program considers that the adaptations must correspond to the fulfillment of the technical norms, which from the outset removes points from the application because some dwellings, no matter how many changes are made, will not be able to scrupulously comply with the dimensions of the Technical Accessibility Norms (NTA), so they are not accessible divisions and the accessibility gain is considered low;
- In addition, there are pre-defined values per m2 for each of the interventions, which are completely unadjusted to market values, especially with the current inflation.

Assistive Products

One measure to mitigate and compensate people with disabilities is the system of attribution of support products free of charge and universal to all people with disabilities (Decree-Law nº 93/2009, of 16 April). This system works with a base of four funding entities, namely: General Directorate of Education (DGE), Institute of Employment and Vocational Training (IEFP), Institute of Social Security (ISS) and Ministry of Health (DGS and ACSS), where through an approved list of products, identified with an international classification, the teams for their prescription are defined.

- 1st difficulty – having few prescribing centers throughout the country to evaluate and prescribe products – resulting in long waiting lists;
- 2nd difficulty – the products to be assigned are not up to date. The lists have not been updated for some time and many of the equipment that are currently found to be necessary to compensate and mitigate activity limitations and participation restrictions resulting from disability or temporary incapacity, are not covered, and this review is urgent;
- 3rd difficulty – waiting time for product allocation and successive attempts to change budgeted values to attribute the lowest value;
- 4th difficulty – some products, such as consumables/diapers, have reference values that do not correspond to people's needs. In the event that a more expensive product is needed because it creates an allergic reaction, the preset value does not change. The person will have to bear the entire remaining amount;
- 5th difficulty – definition of funds for this item is not properly disclosed and foreseen in the State Budget. This forces all bodies to limit the allocation of funds, as it is only at the end of the year, in December, that the dispatch with the amounts is made available and the funds are released to citizens, who have 15 days to deliver receipts for the purchase of products, there are many people with disabilities who are not covered, ending up with money left over instead of being allocated to requests that are pending.

Anti-discriminatory law

From the 2021 Annual Report on Practices of Discriminatory Acts Due to Disability and Aggravated Health Risk, application of Law No. 46/2006, we can verify that:

There were 1195 complaints in 2021, of which 967 were filed by the Ombudsman and that 39.60% of the complaints refer to the refusal or limitation of access to health care provided in public or private health establishments.

Of the 1195 complaints: 578 are concluded or filed and 227 are ongoing.

Of the 578 complaints, 311 were resolved, 206 had no evidence of discriminatory practice and 9 lacked evidence of discriminatory practice.

Complaints of discrimination on grounds of disability represent a percentage of 96.68% (ninety-six point sixty-eight percent) compared to 3.32% (three point thirty-two percent) of complaints for aggravated health risk.

Compared to 2020, there was an increase in the number of complaints presented, given that in 2020 a total of 1023 was registered.

As mentioned initially, the anti-discriminatory law exists and is used whenever people lack it, however, it presents several difficulties that lead to its non-implementation:

1. Complaints must be duly filled in using a specific form where it is stated that the situations that have occurred must be clearly identified, referring to the paragraph of the legislation in

which your situation falls. This point immediately requires the person to have some knowledge and facility in writing so that all the elements are duly filled out. There is no helpline or specialized counter for this purpose;

2. Complaints are handled by one of the 42 general inspection entities that exist in Portugal;

3. In the case of a complaint by a citizen against a citizen, there is no appeal of this kind, a case will have to be initiated before the Court;

4. The legal framework does not provide for any exemption from the court fee for persons with disabilities in relation to disability issues. The regime applied is the general one, according to the economic insufficiency, which leads most of the injured people not to proceed with discrimination processes, due to the costs that this would imply.

Lisbon, October 7, 2022