



10.1.2024

NOTICE TO MEMBERS

Subject: Petition No 1105/2022 by M.R. (Romanian) on alleged discrimination against people with disabilities in Romania

1. Summary of petition

The petitioner claims that the Romanian state differentiates people with disabilities and discriminates against people with severe disabilities from birth who are unemployable. The petitioner says that he has requested that his daughter, who is disabled from birth, cannot take care of herself and is unemployed receive a disability pension for the inability to work. According to the petitioner, the current form of the law 263/2010 in Romania does not include people with severe degree of disability since birth who cannot be employed. The petitioner states that he appealed to the National Authority for the Protection of the Rights of Persons with Disabilities in Romania and received reply that disability pension cannot be granted to his daughter, because she has never been employed and that this type of pension is granted to the persons who have worked but who temporarily or permanently lost their ability to work. According to the petitioner, People's Advocate institution, to which the petitioner also appealed, recommended that the legal framework in Romania should be completed in such a way that adults with a severe degree of disability, who cannot be employed due to the severity of the disability, are also taken into account. The petitioner stresses that people with disabilities since birth who are not employable are forced to live below the poverty level in Romania. The petitioner believes that the law 263/2010 has to be modified in order to ensure without discrimination the protection of rights of persons with disabilities according to the United Nations Convention on the Rights of Persons with Disabilities and asks the point of view of the European Parliament.

2. Admissibility

Declared admissible on 10 March 2023. Information requested from Commission under Rule

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PE758.735v01-00

227(6).

3. Commission reply, received on 10 January 2024

The Commission's observations

The Commission has analysed the information provided by the petitioner and considers that the situation of the petitioner does not come within the scope of Council Directive 2000/78/EC (the 'Employment Equality Directive').¹ The purpose of the Employment Equality Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment. The Employment Equality Directive prohibits direct and indirect discrimination on the ground of disability in the area of employment and occupation. This Directive also obliges employers to provide reasonable accommodation in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned. However, the Employment Equality Directive does not apply to payments of any kind made by state schemes or similar, including state social security or social protection schemes. Accordingly, issues related to disability pensions are beyond the protective scope of the Employment Equality Directive. The Commission underlines that equal labour market participation of persons with disabilities is a priority, as referred in the Commission's Strategy for the Rights of Persons with Disabilities 2021-2030.² The Strategy aims to improve the lives of persons with disabilities in the EU and beyond and support Member States in the implementation of the UNCRPD (the UN Convention on the Rights of Persons with Disabilities). The Strategy highlights gaps in employment, educational attainments and adult learning between persons with disabilities and without disabilities due to a lack of accessibility, reasonable accommodation and support. Furthermore, the European Pillar of Social Rights (EPSR) proclaimed that everyone has the right to equal treatment and opportunities including in the field of employment regardless of *inter alia* disability.³ The EPSR also highlighted that persons with disabilities have the right to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs.⁴

The Commission commits in the Strategy to scale up European action, paying particular attention to employment. One of the seven flagship initiatives within the Strategy is the Disability Employment Package⁵, which was launched at the Czech Presidency conference on 20-21 September 2022. The Package, consisting of guidelines, practices and learning opportunities will be developed over the next two years as a collaborative action involving all

¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, p. 16–22.

² <https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=COM:2021:101:FIN>

³ European Commission, Secretariat-General, European Pillar of Social Rights, Publications Office, 2018, available at: <https://data.europa.eu/doi/10.2792/95934>.

⁴ Ibid.

⁵ [Disability Employment Package to improve labour market outcomes for persons with disabilities - Employment, Social Affairs & Inclusion - European Commission \(europa.eu\)](#)

relevant stakeholders such as the Disability Platform⁶, European Agency for Health and Safety at Work, European Centre for the Development of Vocational Training, and the European Network of Public Employment Services. Actions are planned in six key areas to foster quality and sustainable jobs for persons with disabilities:

1. Strengthening capacities of employment and integration services;
2. Promoting hiring perspectives through affirmative action and combating stereotypes;
3. Ensuring reasonable accommodation at work;
4. Retaining persons with disabilities in employment: preventing disabilities associated with chronic diseases;
5. Securing vocational rehabilitation schemes in case of sicknesses accidents;
6. Exploring quality jobs in sheltered employment and pathways to the open labour market.

In addition, the assessment, recognition and allocation of social protection benefits related to disability and incapacity for work as well as their interaction with other types of benefits remain a matter of national competence, in line with the provision of Article 153(4) TFEU that confirms the right of Member States to ‘*define the fundamental principles of their social security systems*’. Moreover, the European Commission has no competence to intervene in individual cases. In the area of social protection for persons with disabilities, the Commission promotes knowledge-building and mutual exchange among Member States. For example, the Commission has recently published the *Study on social protection for people with disabilities in Europe*⁷ as announced in the Strategy for the Rights of Persons with Disabilities 2021-2030⁸. The report, prepared by the European Network for Social Protection (ESPN)⁹ covers 35 countries, including Romania. It describes and analyses the conditions under which persons with disabilities aged 18 years and above have effective access to social protection. It focuses on the provision of various disability-specific income support schemes, benefits for some risks other than disability, as well as selected support services for people with disabilities. It also provides an overview of ongoing policy reforms and of national debates having an impact on the social protection of people with disabilities and identifies good practices enhancing the access of people with disabilities to social protection benefits and services. As regards the alleged violation of the UNCRPD, the Commission notes that Romania signed and ratified this Convention adopted under the auspices of the United Nations.¹⁰ Accordingly, Romania is under the obligation of complying with its provisions. Any alleged breach committed by national authorities should be followed up with the UN responsible bodies or with national bodies responsible for the implementation of this Convention at national level. Furthermore, Romania signed and ratified the Optional Protocol to the UNCRPD. Therefore, individuals or groups of individuals who claim to be victims of a violation of the UNCRPD provisions by Romania may, under certain conditions, submit a complaint to the UN Committee on the Rights of Persons with Disabilities. The conditions to be met by complainants include, in particular, that all available domestic remedies must be exhausted. Detailed information can be found on the website of the Office of the High Commissioner for Human Rights of the United Nations.¹¹ The

⁶ [Equality: All members of the new Disability Platform now known - Employment, Social Affairs & Inclusion - European Commission \(europa.eu\)](#)

⁷ <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&furtherNews=yes&newsId=10493>

⁸ <https://ec.europa.eu/social/BlobServlet?docId=23707&langId=en>

⁹ https://knowledge4policy.ec.europa.eu/organisation/espn-european-social-policy-network_en

¹⁰ UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 24 January 2007, A/RES/61/106.

¹¹ <https://www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx>

contact address for individual complaints is the following:

Petitions and Inquiries Section
Committee on the Rights of Persons with Disabilities
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14 Avenue de la Paix, 1211 Geneve 10, Switzerland
Email: ohchr-petitions@un.org
Website: <https://www.ohchr.org/en/treaty-bodies/crpd>

Conclusion

The Commission considers that the situation of the petitioner does not come within the scope of EU law. As regards the alleged violation of the UNCPRD, the Commission is not competent to provide an answer and the matter should be instead addressed to the competent authority. In particular, the UN Committee on the Rights of Persons with Disabilities is the body of independent experts which monitors implementation of the Convention by the States Parties.