



THE GREEK  
OMBUDSMAN  
INDEPENDENT AUTHORITY



Special Report

2021

**RIGHTS OF PERSONS  
WITH DISABILITIES**



Special Report

2021

**Rights of Persons with Disabilities**

This Special Report is the result of work on Disability carried out by investigators in the various areas of competence of the Greek Ombudsman, which was collected and processed by a working group assigned with the monitoring of the implementation of the UN Convention on the Rights of Persons with Disabilities (Article 72 Law 4488/2017). The working group consists of the senior investigators: Chrysoula Antoniou, Konstantinos Bartzeliotis, Evanthia Benenkou, Maria Georgopoulou, Artemis Kalavanou, Maria Karageorgou, Ioanna Kouvaritaki, Elena Stabouli, Argiro Tzortzi, Nikos Vittis, Katerina Vlachou and Theodora Voulgari under the supervision of the Deputy Ombudsmen Kalliopi Lykovardi and Evanthia Savvidi.


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The special report on the Rights of Persons with Disabilities 2021 was printed in 2022 by the National Printing House in 500 Greek and 100 English copies. The full version of the report is available on the website of the Greek Ombudsman: **www.synigoros.gr/en**

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 **THE GREEK OMBUDSMAN**

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Dimensions: 16,5x23,5 cm.

Pages: 68

ISSN: 2944-9766

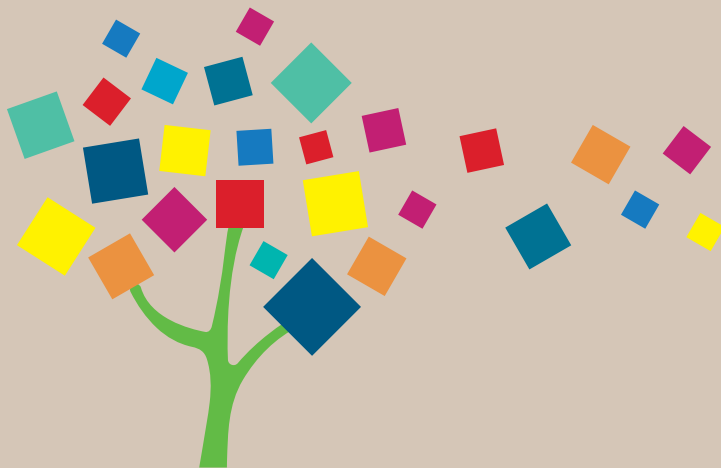
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## ◆ Introduction

The present report is the third of its kind since the assignment to the Ombudsman of the special mandate for the external, independent monitoring of the implementation of the UN Convention on the Rights of Persons with Disabilities. The main objective of this report, as well as of the preceding ones, is to identify the policy areas where progress has been made towards the alignment of the national framework with the requirements of the Convention, as well as to detect deficiencies, shortcomings, delays and/or ineffective regulations and persistent distortions at the level of existing primary and secondary legislation and administrative functioning and practice. The thematic sections of the report focus on the fields of education and employment, reflect the positive developments in ensuring the right to accessibility for persons with disabilities, but also identify problems in the certification of disability as well as in the tax, social insurance and welfare treatment of persons with disabilities. Special reference is made to the problems encountered by children with disabilities, as well as the impact of the pandemic -and the administrative measures that were taken to contain it- on the rights of persons with disabilities. In the present report as well, the Ombudsman reintroduces recommendations for the substantial transformation of the provisions of the Convention into regulations, indicatively mentions some of the Authority's recommendations that were accepted and served as the basis for specific legislative interventions, evaluates the effective implementation of policies and highlights the degree of alertness and response of the administrative mechanism.





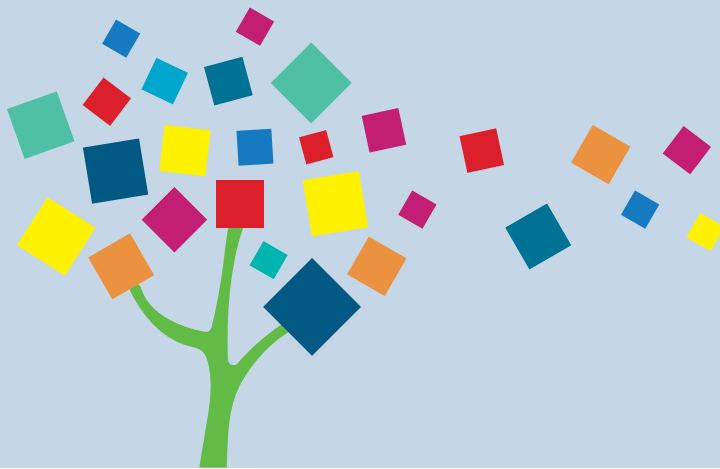
While the central initiative for 2020 was the drafting of the first National Action Plan for the Rights of Persons with Disabilities, an important and necessary step towards the implementation of the commitments that our country undertook by signing and ratifying the UN International Convention on the Rights of Persons with Disabilities, the leading institutional development in 2021, the year that this report deals with, at the EU level this time, was the drafting of the new Strategy for the Rights of Persons with Disabilities for the period 2021-2030. The EU Strategy for 2021-2030 highlights 8 priority areas, contains 7 main initiatives, describes almost 60 actions to be undertaken by the Commission and addresses more than 20 recommendations to the Member States. It is also expected that a catalytic role will be played by the implementation of the reforms which are included in the National Recovery and Resilience Plan "Greece 2.0", mainly in the Pillar "Employment, Skills, Social Cohesion", which aim at the deinstitutionalization, accessibility, social integration, participation in the labour market and social support which reinforces medical protocols. The provisions included in "Greece 2.0" are intended to complement the actions provided for by the National Action Plan for the Rights of Persons with Disabilities. The Greek Ombudsman, under its institutional role as well as its special mandate as a framework for the promotion of the UN Convention on the Rights of Persons with Disabilities, will continue to monitor the degree of implementation of the National Action Plan objectives, as well as the utilization of the funding instruments of the Recovery and Resilience Plan, building on the announced regular cooperation with the Coordination Mechanism and further strengthening consultations with the disability movement.

Firmly committed to the substantive advocacy, promotion and advancement of the rights of persons with disabilities, the Authority fulfils its constitutional mission for an inclusive society.

**Andreas I. Pottakis**

*The Greek Ombudsman*

*July, 2022*



## 1 Disability Certification

According to **Article 1 of the Convention**, disability is defined on the basis of the social model, that is as a result of interaction between a long-term physical, mental, intellectual, or sensory condition and various obstacles, which may have the effect of hindering the full and effective participation of people with disabilities in society, on an equal basis with others<sup>1</sup>. The ideal of substantive equality applies to the Convention as a positive answer to both parts of the dilemma on whether disability, as a feature of human diversity, should be ignored or acknowledged<sup>2</sup>.

**To ignore implies not to discriminate on the ground of disability**,<sup>3</sup> except in cases where due to the nature of a particular activity, different treatment is an appropriate and necessary means of pursuing a legitimate aim, with due regard to the principle of proportionality. According to the Ombudsman's experience, these exemptions as a matter of dispute mainly arise in the field of work and employment and are analysed in the relevant chapter of the present report.

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1. No. 1 CRPD: "(...) Persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."
  2. See § 10 of the General Comment No.6 (2018) of the Committee on Equality and Non-Discrimination (available in English): [https://digitallibrary.un.org/record/1626976/files/CRPD\\_C\\_GC\\_6-EN.pdf](https://digitallibrary.un.org/record/1626976/files/CRPD_C_GC_6-EN.pdf)
  3. See Article 3 of the Convention, where non-discrimination is one of its principles.



To acknowledge disability, on the other hand, implies that disability-related benefit measures in the social security and welfare system, as well as positive measures in education, employment, and taxation are laid down. As a fundamental element of the right to these benefits, disability is still largely approached based on purely health criteria, according to the medical model, and is certified by the health committees of the Disability Certification Center (KEPA)<sup>4</sup>. In this regard, during 2021 the Ombudsman recorded the following developments identified as significant.

### 1.1. Enactment of regulation for the Functioning of the Disability Certification Center (KEPA)

The updating of the disability assessment and certification system is included in the goals of the National Action Plan on the Rights of Persons with Disabilities (goal 4).<sup>5</sup> It is in this context that the regulation for the functioning of KEPA has been enacted under the Ministerial Decision 84045/27.10.2021 (B' 5074).

The binding nature of the regulation of the functioning, especially compared to the previous summary circular and other regulatory fragmentation, and the systematization of the process constitutes a positive step towards the improvement of the operation of the Disability Certification Centers and the security of the administrative process.

As to the content of the Rules of Procedure, the Ombudsman **welcomes:**

- The explicit prohibition, pursuant to Article 20 para. 16, for the Second Degree Health Committee's to reduce the disability percentage and/or its validity period on the applicant's appeal. This arrangement is in line with the Ombudsman's observation as early as 2013<sup>6</sup>, according to which the Second Degree Health Committees are not entitled to worsen the position of citizens when the latter challenge first instance decisions. Otherwise, a more specific manifestation of the principle of sound and in good faith administration is violated, that is the "non reformatio in peius" rule, according to which the act which has been adopted on appeal by the interested party himself should not

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4. KEPA was established by article 6 of L. 3863/2010 (initially subordinated to the Directorate of Disability and Occupational Medicine of the Administration of the I.K.A.- ETAM) and began its operation on September 1, 2011.

5. Available on the website <https://www.amea.gov.gr/action>

6. See The Ombudsman's Annual Report 2013, p. 77.



put the applicant in a worse position, unless the relevant provisions expressly provide otherwise.

- The provision in article 22 that: a) whenever the main disease of the applicant falls under the Table of irreversible diseases, for which the duration of the disability is determined for an indefinite period and to which a disability percentage of at least 67% is attributed, the duration of the total disability percentage (which is co-formed in the case of comorbid medical conditions) is determined for an indefinite period (para. 2); and b) whenever any of the diseases included in the submitted disability benefit file of the person assessed fall under the diseases characterized as irreversible, then a disability benefits file to be assessed is submitted for the specific condition upon the first application for assessment. No file is resubmitted for this specific disease in subsequent assessments- unless it concerns its deterioration- and the percentage remains the same as in the initial assessment (para.3). These arrangements are also in response to the recommendations the Ombudsman addressed in 2020 to the tax administration and the Deputy Minister of Finance, regarding the harmonization of the concept of disability insurance, which marks the retirement of the person with a disability and his final labour market exit, with the finalization/fixation of the tax exemptions to which the person is entitled due to disability<sup>7</sup>.

The Ombudsman **further raises concerns** as to the following:

- Article 20 sets procedural constraints on the substantive assessment of disability. In particular, these constraints concern: a) the entitlement of the person assessed to submit to the Second Degree Health Committee only additional supporting documents, with issuing date prior to the date of the KEPA First Degree Health Committee meeting, which were mistakenly not submitted (para. 13); and b) the conferral of no possibility to the person assessed to submit to the KEPA Second Degree Health Committee additional supporting documents concerning diseases for which the person had not submitted a disability benefits file to the KEPA First Degree Health Committee, or concerning a new disease, the documents of which may be submitted only in the context of a new application (para. 14).
- The Ombudsman had repeatedly pointed out to the Electronic National Social Security Entity (e-EFKA) Directorate of Medical Assessment that the practice

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7. See The Ombudsman's Press Release, 19.5.2022, Exemption from KEPA reassessment of those suffering from irreversible diseases.



which is followed according to its relevant instructions by the Second Degree Health Committees regarding their refusal to take into account the actual conditions- diseases, not only in cases where the persons examined submit evidence for the first time before them, but also in cases where these actual conditions are easily verifiable by the clinical state of the person examined (by a previous health file which is maintained by KEPA, a previous disability certification medical opinion, the medical booklet submitted by the person examined for identification purposes etc.) negates the purpose of substantive assessment of disability. The disability certification process, on the contrary, should be structured in such a way as to ensure to the maximum extent the holistic perspective of each examined person's disability individually.

## **1.2. Inadequate assessment of disability and reduction of the percentage attributed to chronic and progressive diseases**

The Ombudsman received citizens' reports complaining about an inadequate health assessment of their disability and a reduction of the Disability Percentage attributed by KEPA health committees (Case File 297833, 300642). The Ombudsman identified several cases of people suffering from chronic progressive diseases (especially of an autoimmune etiology, such as systemic lupus erythematosus) or from other chronic (psychiatric, cardiac, etc.) and other co-current disorders, to which KEPA health committees attributed a reduced disability percentage. However, these people with disabilities were constantly assessed over consecutive years with a Disability Percentage above 67% and had been out of the labour market for many years, gaining their living through the severe disablement allowance provided by the Organization of Welfare Benefits and Social Solidarity (OPEKA). After their recent examination by KEPA health committees, their disability percentage attributed for the same conditions was reduced and, in some cases, it was marginally inferior to the disability percentage of 67%, as a result of which they are no longer entitled the disability allowance.

It was also established that, in some cases KEPA health committees had a systematic tendency to attribute to each (co)assessed condition the threshold of Disability Percentage provided by the Single Disability Percentage Assessment Table. As a result, the total attributed disability percentage was the minimum prescribed, falling well short (by as much as 17 percentage points) of the disability percentage attributed for the same or similar conditions even two years before, without any improvement in the health of the person examined.



The Ombudsman sent the Electronic National Social Security Entity (e-EFKA) Directorate of Medical Assessment a request to introduce cases, such as the above, to the Sample Checking Committee as well as a request for their re-examination by the health committees in order to amend the attributed Disability Percentage.

### 1.3. Inadequate assessment of disability in diseases that cause the same form of disability as paraplegia-quadruplegia

The Ombudsman has taken note of persons with an advanced stage of dementia syndromes and absolute reliance on care, to which a very high lifetime percentage of disability (over 90%) is attributed based on KEPA medical opinions. The committee decided that in these cases the medical requirements for granting another person assistance allowance are met. However, this specific allowance is granted only to disability pensioners, and as a result there is no provision for any financial support for those citizens who do not receive an invalidity pension, despite the increased needs resulting from their health condition.

For the aforementioned reasons and following relevant court judgements, the institutional framework for granting quadriplegia-paraplegia allowance was amended pursuant to the provisions of article 56 of Law 4554/2018, by expanding the categories of beneficiaries. In particular, those who do not suffer from paraplegia- quadriplegia in the strict medical sense but suffer from conditions which cause the same form of disability have also become beneficiaries of the allowance. The legislative provision aimed, therefore, at the uniform treatment of the functionally disabled, regardless of the more specific underlying disease, while any other interpretation would deprive the provision in question of its regulatory content.

In contrast to the above, it was noticed that in the KEPA medical opinions, the diagnosis of “non-existence of paraplegia- quadriplegia” is often made, although L. 4554/2018 is invoked. In this way, the members of the committee do not seem to correctly implement the legislation, as this provision does not require the finding of paraplegia- quadriplegia for the granting of a non-institutional paraplegia allowance, but rather the assessment of the patient’s functionality. **The legality of the opinions rejecting the granting of the allowance on the erroneous reasoning that paraplegia- quadriplegia is not present is therefore called into question, as this condition is not required by law** (Case File 309147).



## 1.4. Financial assistance procedure for people with severe intellectual disability

Following an individual report (Case File 298599), it was found that the competent offices of OPEKA, in assessing whether the requirement of mental retardation is actually fulfilled - in order to grant financial assistance to persons with severe mental retardation - do not accept medical opinions on disability certification issued by the KEPA health committees. In particular, these are opinions in which the code number and designation of the condition are indicated according to the Single Disability Percentage Assessment Table ("F72 description ICD10 Severe intellectual disability, EPPA code number 548, description EPPA Severe mental retardation"),<sup>8</sup> although it is explicitly defined in the above Joint Ministerial Decision that this specific condition corresponds to an Intelligence Quotient of 20 to 34 and is assessed with a Disability Percentage of 80% - 84%. According to the settled practice, the OPEKA offices return the disability certification medical opinions to the KEPA health committees in order to supplement them and indicate the Intelligence Quotient in its main content.

**This practice on the one hand results in the deprivation of beneficiaries' financial support, which is likely their exclusive source of income for a long period of time until the complex process of the opinion supplementation is completed and, on the other hand, it leads to the further burdening of KEPA health committees. The Ombudsman requested from the OPEKA competent offices and the Electronic National Social Security Entity (e-EFKA) Directorate of Medical Assessment to duly resolve the issue.**

## 1.5. Simplification of disability certification for tax exemptions

Since KEPA was established and began its operation, Regional Health Committees, which had been issuing medical opinions for the granting of disability pensions and allowances, ceased operations. Subsequently, the tax administration was no longer accepting the relevant medical opinions as a disability certification for the granting of tax reductions or exemptions, requesting from that point only KEPA certifications.

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8. Φ.80100/50885/3033/10.12.2018 (B' 5987)



**The Ombudsman highlighted that this situation led citizens, who had received decisions on lifelong disability and permanent pension from the above committees, to be re-examined every two years by the KEPA for the granting of tax reductions and exemptions.**

The Circular Letter of the Independent Authority of Public Revenue (AADE) under protocol number 2225/02-12-2021 clarified that, in cases where the taxpayer receives a pension from a primary insurance organization due to a disability of at least eighty percent (80%), admissible for the granting of tax exemptions may be the medical opinion of a health committee- which binds the insurance organization that grants the pension- as well as health committee medical opinions verifying work incapacity with a disability percentage equal to or above 80%. Furthermore, **it was clarified that in the event that the medical opinion contains a definitive judgement as to the percentage of disability or it is valid for life, it retains its validity** and it is accepted regardless of the time of its issuance or the abolition of the health committee that granted it.







## 2 Children with disabilities

Children with disabilities constitute an extremely vulnerable population, often living in a state of complete dependence on parents or carers, especially in cases of medium and low functionality. Besides, for this reason, **Article 7 of the CRPD** provides that the Signatory States shall take all necessary measures to ensure the full enjoyment of all human rights and fundamental freedoms for children with disabilities, on an equal basis with other children.

Although children with disabilities are rights-holders pursuant to national legislation, the CRPD and the International Convention on the Rights of the Child, they are often unable to react effectively to the violation of their rights. At the same time, they are unable to access protection and redress mechanisms, due to personal and environmental obstacles but also due to stereotyped attitudes.

Claiming their rights is usually undertaken in practice by those with parental responsibility, who legally represent the minors. The vulnerability, however, is wider in the cases where the minor with disabilities suffers domestic violations of his/her rights or when his/her care is entrusted to a welfare service. The Ombudsman monitors the situation of children with disabilities, mainly through filed reports and intervenes with recommendations for the protection of their rights.



## 2.1. Actions of the Ombudsman

During the year 2021, the Ombudsman:

- visited schools as well as an institution for children and adults with chronic diseases in Attica;
- brought forward recommendations to the competent Ministry for improving the protection of children with diseases and transferring care from the institution to the community (deinstitutionalization);
- raised once again issues regarding general education and special schools, where chronic problems prevent unhindered access to the education of children with disabilities and special educational needs (delays in the start of the school year, lack of special educational and auxiliary staff as well as school nurses, inappropriate premises);
- requested a review of the issue of compulsory vaccination of children with disabilities against COVID-19, as a condition for inclusion in open social care structures (Centers of Creative Activities for Children with disabilities and Day Care Centers), considering that the health of children with comorbidities is not sufficiently guaranteed and that they are discriminated against their peers and the general adult population who are not subject to compulsory vaccination;
- dealt with issues related to children with disabilities outside the family environment, being in foster care with an increased risk of institutionalization;
- conducted interventions towards the Greek National Health Service Organisation (EOPYY) in order to approve post-transplantation testing for children in a hospital abroad in accordance with the provisions.

## 2.2. Indicative cases of the year

▶ The Ombudsman examined reports of children with a disability percentage of 67%, according to the medical opinion of the KEPA health committee, who were exempt from an individual membership to participate in sports programs at the swimming facilities of the Municipality of Athens (Grava). For the year 2021-2022 they were charged a membership fee, on the grounds that the exemption is only provided if there is a disability percentage higher than 67%.

During the investigation of the matter, the Ombudsman identified: a) the posting of a relevant- unsigned- text on the website of OPANDA (Organization of Culture, Sport and Youth of the Municipality of Athens), which certifies the exemption of persons with a disability percentage “above” 67%, and b) the decision of the



OPANDA management board published on 01.10.2018, according to which exemption from individual membership in sports programs and use of swimming pools and gyms is granted, among others, to people with a disability percentage higher than 50%.

The Ombudsman requested OPANDA to give explanations in case that no subsequent amending decision had been issued and, if such a decision had been issued, what was the provision of legislation based on which people with this specific disability percentage (67% and higher) are obliged to pay a membership fee. **It was highlighted that national legislation requires a disability percentage of “at least 67%” in order for a person’s condition to be considered “severe disability,” and not a percentage “higher than 67%” in order to be entitled to social benefits.**

In addition, during the case investigation and in the context of monitoring the CRPD implementation, the Ombudsman became aware of the fact that “[...] *people with intellectual disability cannot be registered in the swimming center unless they have a personal PE coach*”. The Ombudsman pointed out that the specific reference is contrary to provisions with superior legal power (CRPD), constituting adverse discrimination on the basis of intellectual disability and, therefore, it must be removed. Particularly, **it was recommended that people with intellectual disability should be given the opportunity to participate in every sports facility of the municipalities either autonomously, or with a means to be ensured by the Municipality, or with an accompanying person (e.g., parent, sibling, friend, relative, therapist, coach)** if they wish so or if it is decided by their legal representative parent (for minors) or judicial assistant (for adults), depending on the type of support required. Following relevant information from the parent concerned, the matter was finally settled (Case File 306750).

► A report was submitted to the Ombudsman (Case File 305368) on behalf of a parent, legal representative of his indirectly insured infant, who, according to the medical opinion of a General Hospital paediatric neurologist, suffers from a metabolic disease, resulting in convulsions and serious disorders in the central nervous system. For the infant’s special nutrition plan, which includes a specific formulation of a certain amount per month, an approval of the expenditure is required by an over- decision of the Supreme Health Council (AYS), as explicitly stated in the Greek National Health Service Organisation (EOPYY) Benefits Medical Opinion.

Despite the fact that AYS acknowledged the child’s condition in its decision on 20.07.2021, instead of issuing an approval, it issued a “partially approving deci-



sion” for two (2) units per month instead of the required eight (8), while additional supporting documents were requested from the parent. Although the additional supporting documents were submitted, the expense was not approved for a long period, resulting to the parent’s inability to pay for it and the risk of the infant’s health deterioration.

**On the basis of the child’s particularly vulnerable situation and its right to the best possible level of health, the Ombudsman requested in writing immediate response from the Greek National Health Service Organisation (EOPYY) and the Supreme Health Council in order to resolve the problem, which indeed happened.**

▶ A parent filed a report (Case File 283242) regarding the procedure followed by the KEPA first degree health committee when assessing his child’s disability percentage. In particular, the child suffered from Pervasive Developmental Disorder and was assessed to have a disability percentage of 67% for a fixed period of time (2015-2020). The parent filed a request for re-examination regarding the specified time period, which was not approved by the National Social Security Entity (EFKA) on the grounds that the child shows “*high functionality pervasive developmental disorder...*”, while he subsequently lodged an objection.

The Ombudsman pointed out to the Directorate of Medical Assessment of the National Social Security Entity (EFKA) that, based on the applicable legal framework at the time of the child’s assessment regarding the diseases for which the duration of disability is determined indefinitely<sup>9</sup>, Pervasive Developmental Disorder - as an irreversible condition- fell within the diseases for which a decision to certify a disability percentage for an indefinite period of time had to be issued, regardless of any other requirement. The combination of the provisions indicated that anyone suffering from Pervasive Developmental Disorder receives a disability percentage of 67-80% for life, without any other requirement and regardless of the severity of the condition or the person’s functionality or intelligence.

**In its document of 24.04.2021, the Ombudsman argued that the KEPA decision was not in accordance with the legal framework applicable at that specific time, while the reasoning for the subsequent negative decision cannot be considered legally valid, as the judgement on functionality or intelligence was**

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9. Single Disability Percentage Assessment Table Ministerial Decision Φ.11321/οικ.10219/688/4.5.2012 (B’ 1506) and Ministerial Decision Φ.11321/οικ.31102/1870/31.10.2013 (B’ 2906)



**not intended to affect the decision concerning the duration of the condition. According to the principle of legality, the public committee should have acted in accordance with the provisions of the legislation in force at that time and attribute to the child a disability percentage valid of an indefinite period of time, as the committee did not enjoy any discretion on the matter.**

Furthermore, the Ombudsman contented that the existing legal framework<sup>10</sup>, which since 2018 treats functionality and intelligence as determinants of the severity of the condition in assessing the disability percentage, does not rule out on normal intelligence and high functionality the attribution of disability percentage of 67% to Pervasive Developmental Disorder (or otherwise Autism Spectrum Disorder).

In addition, the Ombudsman, following the opinion of the Legal Council of State<sup>11</sup>, maintained, on the one hand, that in the event of an appeal filed exclusively by the insured person, the KEPA Second Degree committee cannot reduce the disability percentage or the duration of validity of the medical judgement that was determined by the first degree committee, and on the other hand, that the subsequent legal framework is expressly applied to committee judgements from 01.01.2018, without retroactive effect. At the same time, the Ombudsman reminded the Directorate that the health committees should be made up of appropriate specialities related to children's diseases (paediatric neurologists, paediatric psychiatrists, etc.), that the disability medical reports must bear the signatures and specialities of the doctors who make up the committee and, finally, that child-friendly procedures should be applied.

The Directorate of Medical Assessment of the National Social Security Entity (EFKA, now Electronic National Social Security Entity e-EFKA) notified in writing the Ombudsman that, following the parent's objection, the Second Degree health committee issued a medical opinion with a disability percentage of 67% and a fixed validity period. **Following this, the Directorate notified the competent local National Social Security Entity (EFKA) branch of the legal framework that was in force during the child's assessment and requested that the case will be re-introduced for examination, with a staff notice and without the physical presence of the person concerned nor the payment of a fee, so that the relevant legal framework is applied.**

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10. Ministerial Decision Φ.80100/50885/3033/10.12.2018 (B' 5987) and Φ.80100/οικ.17630/943/19.4.2018 (B'1560)

11. No. 28/2020



► In 2021, the Ombudsman was requested to intervene for the case of an unaccompanied minor who suffered from terminal chronic renal failure, in order to speed up the interview on the application for international protection due to the state of his health. According to what was argued in the report (Case File 295568), the minor could not be registered in the registry of prospective renal transplant recipients if he did not have a residence permit. In a relevant screening of the legislation, it was found that the Ministerial Decision<sup>12</sup> which included the provision in question was repealed by virtue of a recent provision<sup>13</sup>, while the issuance of a circular letter for the regulation of related issues was still pending.

**Given these circumstances, the Ombudsman immediately proceeded with an intervention to the competent office of the Asylum Service, requesting the acceleration of the interview of the kidney disease minor sufferer. The service's response was immediate, as the interview was scheduled and conducted within a short period of time after receiving the Ombudsman's document.**

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12. Y4a/315159/5.6.2014 (B' 1451)

13. Article 19 of L. 4771/2021



## 3 Accessibility and personal mobility

### 3.1. Accessibility to the built environment

Accessibility to the built environment is a very important aspect of the daily life of people with disabilities, although it cannot be taken for granted. According to **Article 9 of the CRPD**, to enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications.

Although accessibility is enshrined as a right for people with disabilities, as citizens and equal members of society, the Ombudsman is often called upon to mediate on accessibility issues. The Ombudsman has examined numerous cases concerning the accessibility of public spaces, public buildings (e.g. Courts) and private ones, the accessibility of building facilities of entities in the field of selling goods and providing services, the incorrect demarcation (dimensioning) of parking spaces for people with disabilities, the accessibility problems due to illegal parking of vehicles or the sidewalk occupancy with chairs and tables etc.





### 3.2. Developments at institutional level

The enactment of the Ministerial Decision under number οικ.ΥΠΕΝ/ΔΜΕΑΑΠ/99709/796/22.10.21(B' 5045), which provided for technical specifications for the accessibility designs concerning buildings and communal outdoor spaces, constitutes a step forward for the crucial issue of the accessibility for people with disabilities in the built environment. This outstanding issue had been pointed out by the Ombudsman in its Reports of the years 2019 and 2020<sup>14</sup>. The regulation concerns new or old buildings that are adapted to become accessible, as well as the configuration of public communal spaces in the urban environment.

**The Ombudsman has repeatedly pointed out that every reconstruction plan of public communal areas should be accompanied by a corresponding accessibility design.** However, the implementation of existing accessibility measures is still pending, as in practice these measures are often cancelled by factors such as the occupation of the walkways for the blind or the parking spaces reserved for persons with disabilities by shopkeepers or passers- by on board.

### 3.3. Personal mobility

Pursuant to **Article 20 of the Convention on the Rights of Persons with Disabilities**, States Parties shall take effective measures to ensure mobility with maximum independence for persons with disabilities, including facilitating the mobility of persons with disabilities according to the mode and time of their choice, at an affordable cost.

**The Ombudsman, in its 2020 Report on the Rights of Persons with Disabilities<sup>15</sup>, had emphasized that, based on the current institutional framework, the connection of personal mobility with a specific vehicle, and not with a specific person with disabilities, is contrary to the purpose of Article 20 of the CRPD and hinders the mobility both of people with disabilities themselves and their families. To this end, the Ombudsman has proposed to the Administration to maintain the facilitations provided for persons with disabilities (e.g., parking, free passage) even when they move with private means, even non-owned ones (hired vehicles, taxis, friends' vehicles etc.).**

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14. See Special Report 2020 on the Rights of persons with disabilities, p. 25-26, The Ombudsman's Annual Report 2020, p. 123, The Ombudsman's Annual Report 2019, p. 126

15. See Special Report 2020 on the Rights of persons with disabilities, p. 39



The provision of parking spaces reserved for persons with disabilities, which ensures the easiest possible access to the property where they live with the aim of covering their daily needs, is particularly important for both personal mobility and accessibility.

The granting of a reserved parking space is typically linked to the permanent place of residence and the appropriate proving documents are required by the relevant municipalities. However, the requirement of permanent residence does not arise from the relevant legislative framework. Besides, this restriction would be contrary to the purpose of article 20 of the CRPD, as it would result in a difficulty in moving for people with disabilities who reside for a long time in a place other than the one they have declared as their permanent residence.

**At the same time, the modification of the table of diseases laid down in article 16 of L. 1798/1988 as well as the expanded matching of these diseases with those of the Single Disability Percentage Assessment Table (EPPPA) constitutes a significant development.** Since 2020, the Ombudsman had expressed the opinion that the perspective according to which the diseases were included in the table of diseases of article 16 of L. 1798/1988 (on the basis of which a number of tax exemptions are granted and, in particular, exemptions related to private non-commercial vehicles taxes) is particularly restrictive and excludes diseases which substantially hinder the person's mobility (e.g., cardiopulmonary diseases), despite the fact that they are not related to his/her motor system.

**In this context, the Ombudsman had asked the tax administration and the Deputy Minister of Finance to modify/expand the table based on inclusion to the maximum possible extent. The Ombudsman repeated the above requests to the Minister of Labour and Social Affairs.**

In response to the above, a matching of the diseases described in article 16 of L.1798/1988 (A'166) with the diseases and disability degrees specified in the Single Disability Percentage Assessment Table (EPPPA) of article 7 of L. 3863/2010 was carried out. The Ombudsman welcomes this expansion but reserves the right to continue its interventions until the full inclusion of every disease that involves hindered mobility.

### 3.4. Indicative cases of the year

► A woman with mobility impairment filed a report for the facilitation of her accessibility to public spaces (sidewalks), in order to be able to approach the bus stop unhindered for her transportation (Case File 301501). The person in question resided on a main road of the Municipality of Lykovrysi-Pefki, but the



access to the bus stop was extremely difficult. Movement on the already narrow sidewalks was impossible in several spots, as trees, built-in flower stands, tables and steps were blocking the way and, as a result, it was necessary to cross the narrow downhill road surface where there were parked cars and passing buses on both sides. No response was given to the repeated requests made by the interested party to the Municipality.

The Ombudsman reiterated in its intervention the special importance of accessibility for the equal enjoyment of the rights of citizens with disabilities, both according to the provisions of the UN Convention, as well as pursuant to national law and the National Action Plan on the Rights of Persons with Disabilities. It was also emphasized that even if the adaptation of public spaces, and especially sidewalks, to conditions of accessibility for people with disabilities is confronted with technical difficulties, it is an obligation of the competent bodies responsible for public spaces (the municipalities in this case) to act accordingly, in order to ensure accessibility in the built environment.

► The Ombudsman received a complaint about the occupancy of a reserved parking space for a person with disabilities following a change in the layout of the open-air market. The problem resulted from the enforced increase in distances, as part of the emergency measures against COVID-19. The new spatial mapping indicated by the Municipality resulted in the occupancy of the parking space by a seller of the open-air market and caused friction between the parking space holder and the market traders.

**The Ombudsman pointed out in its letter to the Municipality of Servion that when measures are taken to serve the public interest, which include measures taken by the state to protect public health, every possible effort should be made to avoid derogation to constitutionally guaranteed rights of persons with disabilities.** The Ombudsman urged the Municipal Authority to undertake initiatives in this direction, also examining alternative possibilities for the location of the open-air market, so that the prescribed distances are respected (Case File 294517).

► The Ombudsman received a report regarding the inability of a person with disability to access a bank branch due to the lack of a ramp (Case File 293092). As a body for the monitoring and promotion of the principle of Equal Treatment, the Ombudsman has competence over the private sector, nevertheless mainly for issues regarding employment and occupation (no. 3 para. 1. L. 4443/2016). With regard to the access of the provision of goods and services, it has the au-



thority to intervene only in relation to certain grounds of discrimination, which do not include disability or chronic diseases. The Ombudsman has, however, repeatedly received reports that fall within the general problem of accessibility in the built environment. **In light of the foregoing, although the Ombudsman does not have the competence to inspect financial institutions, it handles related cases in its competence as a promotional framework of the UN Convention on the Rights of Persons with Disabilities<sup>16</sup> and informs in writing about the accessibility problems that have been brought to its attention, as well as the provisions of the legislation.**

► The Ombudsman dealt with a case of a citizen with disability, who resides for a significant period of the year in his place of origin, yet declares Athens as his permanent place of residence. The Municipality of his place of origin had granted him a reserved parking space in front of his residence. The owner of a neighbouring property protested, claiming on the one hand that due to the marking of the parking space, his own access to his property is blocked, and on the other hand that this person with disability was entitled to another reserved parking space in Athens. Following the above-mentioned, the Municipality repealed the decision to grant the parking space. Both interested parties resorted to the Ombudsman who carefully examined the cases, seeking to ensure the unhindered access of the person with disabilities to his property, while also taking care to remove any obstacle to access to the neighbouring residences.

**The Ombudsman pointed out that the crucial element in this particular case is not whether it is about the person's permanent residence but his accessibility to a place he has proven to reside in for a long time in accordance with the CRPD, provided of course that the access to neighbouring properties is unhindered.** The Ombudsman asked the Municipality, in accordance with the requirements of article 20 of the Convention, to grant a reserved parking space in an area with specific markings and demarcation, which does not prevent access to other adjacent properties (Case File 304429).

### **3.5. Findings and recommendations of the Ombudsman**

A general conclusion that can be drawn from the reports investigated by the Ombudsman is the poor observance of the prescribed protective provisions on

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16. Article 72 of L. 4488/2017



the part of the competent bodies, which causes accessibility difficulties for the hindered persons. Also, it is established that, in terms of accessibility issues in the built environment, the Administration in several cases complies only after a complaint has been submitted by persons with disabilities.

**It is pointed out that the above dysfunctions of the Administration are faced in new projects, renovations or financed improvements of accessibility infrastructure in public buildings. As an agent for promoting the UN Convention, the Ombudsman finds that the necessity of respecting the rights of the hindered persons has not been established.**

In particular, the parking spaces intended for persons with disabilities should have specific dimensions, suitable for the unhindered opening of the doors of the disabled car and the facilitation of the wheelchair. The construction of parking spaces with the prescribed dimensions (3.50 m wide and at least one parking space with dimensions of 4.50X6.60 m to facilitate a VAN type vehicle) should be foreseen during the planning stage. Additionally, the connection of ramps with the sidewalk and road surface is often not done in accordance with the provisions of the Ministerial Decision 52907/28.12.09 (B' 2621). Cases have been recorded in which the ramp has been constructed in such a way as to have a step to its end, thus hindering the wheelchair user, as there should not be even a minimal height difference at the meeting point of the curb of the ramp and the road surface. Another common omission concerns the absence of marking, both on the ground and pole-mounted, of the special parking spaces for people with disabilities with the International Symbol of Access.

Finally, the Joint Ministerial Decision<sup>17</sup> of the year 2017 "Definition of terms, conditions, technical issues, necessary details and procedure for the granting of simple use of seashore, beach, bank and riparian zone of large lakes and navigable rivers" is often not applied, particularly article 16 which concerns the provision of accessibility to the sea for people with disabilities and other hindered people, in the public spaces of seashores and beaches. Based on a report received by the Ombudsman (Case File 286053), **it was established that ETAD (Public Properties Company) which leases spaces to catering establishments or bars, notifies lessors of their obligations regarding accessible infrastructure belatedly and only after the Ombudsman's intervention.**

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17. ΔΔΠ0007378/0454BEΞ2017/11.05.17 (B' 1636)



## 4 Education

According to **Article 24 para. 5 of the CRPD**, States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others.

The Ombudsman handled reports (Case Files 284552, 290535) of graduate students with disabilities, beneficiaries of welfare benefits paid by the Organization of Welfare Benefits and Social Solidarity (OPEKA), who submitted **applications for exemption from the payment of tuition fees for the Master's Degree Programs (M.S.)** which they attended.

As defined in para. 1-2 of Article 35 of L. 4485/2017 (A' 114), Higher Education Institutes (AEI) ensure access to the second cycle of studies for students who meet the academic admission criteria, regardless of their economic background. In this regard, exemption from tuition fees is provided for students attending Master's Degree Programs, whose *"individual income, provided they have one, and the family's available equivalent income do not exceed one hundred per cent (100%) or seventy percent (70%), respectively, of the national median disposable income equivalent (...)"*.



In their applications to the relevant Master's Degree Programs, postgraduate students had notified that, on the basis of the provisions<sup>18</sup> of article 81 of L. 4611/2019, **the monetary sums that are paid by OPEKA in cash to persons with disabilities, as welfare allowances, do not come under any income category and therefore are not taxed.** On that basis, students argued that the relevant welfare allowance should not be counted when calculating their individual/family income. However, **the Universities rejected the request on the grounds that an explicit exclusion of welfare benefits from the calculation of income has not been included** either in L. 4485/2017 (A' 114) or in the relevant<sup>19</sup> Ministerial Decision, additionally to the fact that the exemption from tuition fees does not constitute a social or welfare benefit.

The Ombudsman in its letter requested the revision of the issue by the competent university bodies, arguing that:

- a) the exemption from tuition fees is clearly a social/welfare provision for students with disabilities, as the social/welfare policy in favour of the vulnerable group of people with disabilities is not only pursued through cash benefits (allowances) but also through a number of exemptions from payments, such as exemptions from taxes (Unified Property Tax, income tax), fees (circulation taxes and vehicle registration tax), transportation fares etc.;
- b) according to the literal interpretation of article 81 of L. 4611/2019, it is clear that the intention of the legislature is to take precedence over any provision to the contrary, in the case of welfare/social benefits for persons with disabilities.

The Ombudsman's intervention was followed by a question addressed by the University to the Legal Counsel of the State, which in its Opinion<sup>20</sup> concluded that the pecuniary welfare benefits paid to a postgraduate student by OPEKA may not be

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18. No. 81 of L. 4611/2019 "...The amount of welfare allowances in cash to persons with disabilities is not subject to any withholding or contribution, is not confiscated by the State or third parties, in derogation of any general or special provision, and is not set off by debt obligations to the tax authority administration and the State in general, municipalities, prefectures, first and second grade legal entities of local authorities (OTAs), insurance funds or credit institutions and is not counted in the income limits for the granting of any social or welfare benefit."

19. Ministerial Decision 131757/Z1/2.8.2018 (B' 3387) of the Minister of Education, Research and Religious Affairs "Regulation of matters of exemption from tuition fees for students of Postgraduate Programs of Greek Higher Education Institutes (AEIs)"

20. No. 160/2021



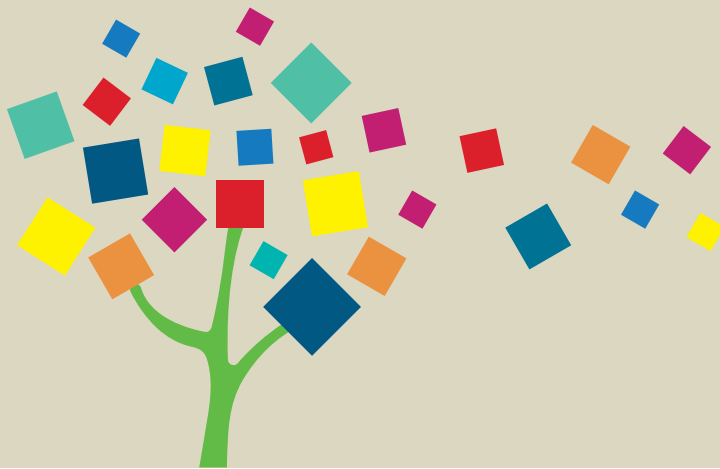
taken into account when calculating the student's total personal income in order to determine whether he or she is entitled to an exemption from tuition fees, as defined in Article 2 para. 6 of No. 131757/Z1/2.8.2018 decision of the Minister of Education, Research and Religious Affairs.

Following that, the Ombudsman forwarded a new document to the Secretary General for Higher Education of the Ministry of Education and Religious Affairs, in which it was pointed out that the emphatic wording of the latest provision of Article 81, L. 4611/2019, with regard to the unconditional implementation of the provisions for non-calculation of all the benefits in question to the income limits, renders any explicit reference to previous provisions devoid of meaning. In any case, the Ombudsman underlined that the use of the word "granting", in the text of the most recent provision of L. 4611/2019, could not be interpreted as limiting its scope only to benefits paid in cash. In this direction, the Ombudsman proposed supplementing the provision of L. 4484/2017 in a way that will expressly provide that the monetary amounts paid by OPEKA in cash as welfare and social benefits to persons with disabilities are not included in the income of students entitled to exemption from postgraduate tuition fees.

**Indeed, in compliance with the above, the Deputy Minister of Education and Religious Affairs issued No. 17041/Z/16.2.2022 (B'784) amending decision of the Ministerial Decision 131757/Z1/2-8-2018, which expressly states that the monetary aids paid by the Organization of Welfare Benefits and Social Solidarity (OPEKA) in cash, as welfare and social benefits to persons with disabilities, are not taken into account when calculating the family disposable income equivalent and the individual total net income of the applicant in the process of exemption from tuition fees in a Master's Degree Program.**







## 5 Employment

### 5.1. Introduction

In accordance with **Article 27 para. 1 of the Convention**, the right of persons with disabilities to work on an equal basis with others is recognized, including the right to the opportunity to earn a living by work that is freely chosen, is accepted in a labour market and is part of a work environment that is open, uniform and accessible to persons with disabilities. The State shall safeguard and ensure the exercise of this right for persons with disabilities, including those who acquire a disability during the course of employment, by taking all appropriate measures.

Furthermore, based on the principle of substantive equality that underpins the CRPD as a whole<sup>21</sup>, the right to work for persons with disabilities, on an equal basis with others, is founded upon certain sub-objectives, which are indicatively set out in points α´-κ´ of Article 27 para. 1 of the Convention and which revolve around three axes: i) non-discrimination, ii) reasonable accommodation and iii) affirmative action.

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21. See § 10-11 of the General Comment No.6 (2018) of the Committee on the Convention on Equality and Non-Discrimination (available in English): [https://digitallibrary.un.org/record/1626976/files/CRPD\\_C\\_GC\\_6-EN.pdf](https://digitallibrary.un.org/record/1626976/files/CRPD_C_GC_6-EN.pdf)



These main axes, as components of substantive equality, are also guaranteed at the level of the European Union, particularly through Directive 2000/78 which is incorporated into Greek domestic law through L. 4443/2016 (Part A) and concerns, regarding persons with disabilities, employment and occupation. Thanks to this dual foundation, combined with the interpretive guidance provided both by the Committee on the Rights of Persons with Disabilities<sup>22</sup> as to the CRPD and by the Court of Justice of the European Union as to the Directive, the Ombudsman, as an institutional mechanism for promoting the implementation of both of these legislative texts with superior legal power<sup>23</sup>, disposes of more precise interpretive indicators and a higher degree of certainty in formulating conclusions and proposals in the performance of his duty.

The main findings of the Ombudsman for 2021, categorized according to the axes mentioned above, are specified below.

## 5.2. Non-discrimination

Non-discrimination is set out as a principle in Article 3 of the Convention and as a specific form of the principle of equal treatment, in Article 2 of Law 4443/2016. It falls upon the Ombudsman's competence to monitor the compliance with the principle of non-discrimination, mainly in light of the specification of the derogations explicitly allowed under Article 4 para. 1 of L. 4443/2016: **exceptionally, different treatment on the grounds of disability or chronic illness is allowed when i) due to the nature of the activity, this different treatment constitutes a substantial and decisive occupational requirement, ii) the relevant objective is legitimate and iii) the requirement is proportionate.** When asked to justify measures taken against the employee with a disability or chronic illness, which may constitute discrimination in employment and occupation, the employer bears the burden of proving that these specific conditions are met.

The Ombudsman was asked to monitor the implementation of the above legal framework in the following cases:

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22. Art. 34 CRPD

23. See Article 72 of Law 4488/2017 and Article 14 of Law 4443/2016



### A) Recruitment of guard personnel by the Hellenic Railways Organization (OSE)

The Ombudsman investigated the reports of two candidates regarding the refusal of the Hellenic Railways Organization to hire them as guards of level crossings due to their medical history. The Ombudsman pointed out to the respondent Organization that its vague allegation, that the duties associated with this specific post concerned the safe passage of trains through level crossings and that the candidates were not suitable to perform the duties associated with the post, since they did not meet the criteria of the Regulation on the Assessment of the Physical Ability of the Personnel, was insufficient. Apart from the fact that the Regulation in question entered into force in the year 1983 and reflected outdated notions, in any case, in order for such a refusal to be permissible from a non-discrimination point of view, the Hellenic Railways Organization bore the burden to make mention of the specific disability of the candidates excluded as well as the specific duties associated with the post and, subsequently, to prove how the specific disabilities hindered the performance of those duties. Finally, the Hellenic Railways Organization had to indicate whether the possibility of taking measures of reasonable accommodation was considered.

**In one of the two cases, the Hellenic Railways Organization did not satisfy the burden of proof, as a result of which the Ombudsman concluded that Article 11§2 of L. 4443/2016 on the imposition of administrative sanctions due to violation of the principle of equal treatment was applicable** (Case File 294618). In the latter case, the Hellenic Railways Organization stated that the level crossing guards are considered high-responsibility personnel, for which more stringent criteria apply, as well as that the specific candidate suffered from bipolar affective disorder, therefore she was subject to the explicit provision of the Regulation on the Assessment of the Physical Ability of the Personnel, according to which candidates suffering from “Affective psychoses (manic-depressive psychosis, mania, melancholia)” are not deemed suitable. Based on this justification, the Ombudsman concluded that this case did not constitute discrimination on grounds of disability (Case File 302135).

**However, the Ombudsman highlighted the need for the Hellenic Railways Organization to proceed to the immediate amendment of the Regulation on the Assessment of the Physical Ability of the Personnel, so that its provisions become up to date and comply with the provisions of L. 4443/2016 on the equal treatment of persons with disabilities in employment and occupation, as well as with the United Nations Convention on the Rights of Persons with Disabilities (L. 4074/2012 and L. 4488/2017).**



### **B) Recruitment of personnel by a Municipality to address the need to contain the spread of COVID-19**

The Ombudsman received numerous reports by the National Confederation of Disabled People and the Hellenic League Against Rheumatism regarding the invitation to apply for fixed-term positions under private law issued by a Municipality, which contained a condition that excluded persons suffering from chronic diseases or underlying medical conditions as well as those belonging to groups vulnerable to COVID-19. The Municipality argued that these positions are intended to cover the need to contain the spread of coronavirus and invoked the need to protect public health and the health of employees, as well to achieve the aim of the invitation, which does not allow for the granting of special purpose leaves or remote work. **The Ombudsman emphasized that the generally worded condition included in the disputed invitation cannot be justified, as it constitutes discrimination on grounds of disability or chronic illness and that only if this is required by the nature of the duties of the respective position, under certain conditions, could the exclusion of those in high-risk groups for COVID-19 infection be considered legitimate.** Finally, the Ombudsman addressed a recommendation to avoid using similar wording in the future (Case File 292325).

### **C) Dismissals of employees with chronic diseases**

The Ombudsman handled a labour dispute forwarded by the Labour Inspectorate (S.E.P.E.), pursuant to Article 25 of L. 4443/2016, concerning a complaint by a labour union that the employer company proceeded to dismiss employees with chronic illnesses (Case Files 297745, 297570). During the discussion of the labour disputes, the company invoked financial and technical reasons that dictated the reduction in its workforce, while it claimed that the selection of the specific employees was made based on their low performance compared to the rest of their colleagues and not because of their health status.

**Following this, the Ombudsman called on the employing company to provide evidence proving that the termination of the applicants' employment contract was not made on grounds of their health condition.** In all three of the cases it was proven that the departments in which the complainants worked showed a reduction in operations since the end of 2020 and it was therefore deemed necessary to dismiss sixteen (16) employees in March and April 2021. From the evaluation of the overall evidence, it emerged that in two of the three cases, the allegation that the employee's health condition was a criterion for the termination of their employment contracts and was therefore causally related to it was not substantiated.



Specifically, the evidence provided by the company indicated that they received the lowest evaluation, that the company made efforts to improve their performance, it took measures of reasonable accommodation (working hours, job position) and considered the possibility of transferring them to a different department. However, in the third case involving a female employee who developed cancer after having been employed by the company over a period of several years, it was not established that the company took measures of reasonable accommodation, as it did not proceed to the adjustment of any specific measure in this context. In fact, it was revealed that the company dismissed the employee while she was undergoing chemotherapy, whilst no evidence was submitted to justify the dismissal of this particular employee based on objective performance criteria, given that the rest of her colleagues in the same field of work had received the same evaluation. Finally, it was not proven that the company exhausted every alternative means available in order to avoid the onerous measure of dismissing the employee and, in particular, that a different work post or another function was sought or proposed. Therefore, the Ombudsman's suggestion to the Labour Inspectorate was the imposition of a fine for discrimination on grounds of disability or chronic illness in employment, which was indeed imposed.

#### **D) Refusal to grant the right to reduced working hours to persons with a disability percentage of 67% or more**

The Ombudsman received a report by a female employee of a Municipal Development Enterprise, with a disability percentage of over 67%, whose complaint was that the enterprise rejected her request to reduce her working hours by one (1) hour per day, without any reduction of her salary. The reduction of working hours for persons with disabilities, pursuant to Article 16 para. 5 of L. 2527/1997, concerns employees of the State, legal entities under public law and Local Government Organizations.

The Ombudsman pointed out to the Directorate of Personnel at Local Government Organizations of the Ministry of the Interior that the attainment of state, public or local government objectives is often also entrusted to legal entities under private law, which are controlled and subsidized at a rate exceeding 50% by public bodies, legal entities under public law and Local Government Organizations and are treated as public sector bodies both from a budgetary perspective and in terms of staffing procedures (see, respectively, Article 14 of L. 4270/2014 and Article 2 of L. 4765/2021). **This results in a different treatment by the Legislator of persons with disabilities who are employed in public sector bodies, based on the legal form of the entity in which they are employees, that is,**



**whether they are employees of the State, legal entities under public law and Local Government Organizations, or they are employed by legal entities under private law, which are owned by the State, by legal entities under public law and by Local Government Organizations.**

Therefore, the Ombudsman emphasized that this differentiation should be objectively justifiable. It was also recalled that, based on the principle of equal treatment enshrined in Articles 20 and 21 of the EU Charter of Fundamental Rights, comparable situations must not be treated differently, and different situations must not be treated in the same way unless such treatment is objectively justified in the light of all the factors characterising those situations, taking into account the objective and the aim of the national legislation creating the distinction at issue<sup>24</sup>. The Ombudsman's Letter has been forwarded to the Directorate of Human Resource Management of the Ministry of Interior and a reply is awaited (Case File 259697).

#### **E) Procedure for assessing the physical fitness of persons with disabilities for appointment in the public sector**

The evaluation of the health and physical fitness of the candidates to perform the duties associated with the position they would assume as a prerequisite to be appointed in the public sector, according to the original version of para. 2, Article 7 of the Civil Servants' Code (YK),<sup>25</sup> had been conducted by a medical committee, on the basis of a referral document issued by the agency involved which would make reference to the duties associated with the position. By virtue of para. 1, Art. 7 of L. 4210/2013, the above procedure was significantly simplified, as the evaluation was carried out, on the basis of the same referral, by a pathologist or general practitioner and a psychiatrist, either in the public or private sector. However, through Article 48 para. 1 of L. 4674/2020, the previous evaluation system was reinstated specifically with regard to persons with disabilities who are appointed under general or special provisions<sup>26</sup>.

A subsequent Opinion<sup>27</sup> of the Legal Counsel of the State declared that the provi-

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24. See, inter alia, CJEU judgment of March 9, 2017, in case C-406/15, Milkova, paragraphs 51-57, with further references to earlier case-law.

25. L. 3528/2007

26. The same arrangement is provided for in para. 3 of L. 4674/2020 for prospective employees in Local Government Organizations.

27. No. 88/2020



sion in question also included the pending cases, namely the cases for which the act of appointment had not been issued yet. According to this Opinion, which has been accepted by the competent Minister, the relevant offices should refer the candidates for appointment to the competent medical committees, in order for them to assess the health and physical fitness under the new provisions.

**The Ombudsman remains of the opinion<sup>28</sup> that the determination of a far more cumbersome and time-consuming procedure for evaluating fitness to work, especially regarding persons with disabilities, places the persons in question in an even more unfavourable position and that this differentiation cannot be justified as being necessary, given that the procedure that is still applicable for the rest of the candidates aims at the same result.**

In addition, the procedure cannot be considered appropriate either, given the limited time that the medical committees have at their disposal to examine each case and the largely formalistic way of implementing the procedure, while on the contrary, under the previous scheme, the certification of fitness to work could be issued by the attending physician, who is presumed to have a more thorough knowledge of the candidate's abilities. Therefore, this results in violation of the principle of proportionality and, by extension, in discriminatory treatment against persons with disabilities, thus being in breach of the CRPD and Directive 2000/78.

Additionally, pursuant to para. 1 of Article 7 of the Civil Servants' Code, the candidates, regardless of whether they have a disability or not and, if the former case applies, regardless of whether they are going to be appointed under the general or special provisions, they should undergo an assessment of their ability to perform the duties associated with the position, even if that occurs with the assistance of appropriate and justified technical means. **However, the distinction of the procedure followed for the evaluation of fitness to work based on the existence of disability implies that disability is a characteristic that is neither related to the fitness to perform specific duties, nor assessed in association with them, an assumption that is compatible only with the medical model and, as such, in direct violation of the Convention.**

A typical case of the perfunctory way in which the medical committee assesses the fitness of a candidate for appointment was illustrated in the report filed by person suffering from a mental illness and, correspondingly, having a disability percentage of 67%. The person with disability took part in an announcement for

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28. See Special Report 2020 on the Rights of persons with disabilities, p. 56-57.





posts by the Supreme Council for Civil Personnel Selection (ASEP) and was included in the list of appointees under the quota in favour of persons with disabilities, in the branch of sanitation workers with Compulsory Education.

After the Municipality where the person was appointed referred him for examination to a pathologist or general practitioner and a psychiatrist in order to assess his physical and mental health and his physical fitness to perform the duties of his appointed position, the medical opinion he submitted stated that he is capable of performing the duties associated with the post, as long as he continued his treatment. However, the Municipality was not proceeding to his appointment until the amendment of the aforementioned legislative framework regarding the change of the procedure for assessing fitness to work and the issuance of No. 88/2020 Opinion of the Legal Counsel of the State for its retroactive application to pending cases. Consequently, he was once again referred to the competent medical committee, which deemed him unfit for the duties of his position, despite the dissenting medical opinion of the Director of the Psychiatric Hospital<sup>29</sup>.

The Ombudsman had pointed out in its written intervention that, in accordance with the new legal framework, it falls upon the Committee to express the concluding opinion on the matter which now falls within its competence; however, in any case, its decision as to the candidate's fitness to work should be fully and specifically justified. In the above case, the Committee's negative decision was communicated to the interested party, albeit without notifying him of its reasoning (Case File 275693).

### 5.3. Reasonable accommodation

The denial of reasonable accommodation for persons with disabilities constitutes a form of prohibited discrimination, pursuant to Article 2 of the Convention and point n' of para. 2, Art. 2 of L. 4443/2016. **Reasonable accommodation refers to the necessary and appropriate modifications, adjustments and appropriate measures which are required in a particular case and do not impose a dispro-**

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29. Specifically, the medical opinion stated: "It is deemed that he is able to engage in gainful employment responsibly and stably, which includes his being assigned to the position of regular personnel (permanent employee of the branch of CLEANING WORKERS with Compulsory Education), in order to unexceptionally perform the duties associated with this position, i.e. Refuse collection (manually, using the appropriate equipment provided by the Municipality), collection of waste as a member of the crew of a refuse collection vehicle, collection of bulky objects, cleaning of public spaces".



**portionate or undue burden on the employer,<sup>30</sup> in order to ensure the principle of equal treatment for people with disabilities or chronic conditions.** The above applies in general to the conditions for access to employment and occupation in the private and public sector, as well as to the dismissal of employees.<sup>31</sup>

In practice, however, both in the public and in the private sector, the Ombudsman notices the denial of reasonable accommodations or, at least, the lack of familiarity with what the specific obligation entails on the part of the employer, thereby resulting in the impossibility or difficulty of the employee to successfully fulfil his or her duties. This occurs either because the employer is unaware of the statutory obligation to provide reasonable accommodation, or because the need of the disabled or chronically ill employee for measures of reasonable accommodation in order to effectively perform their duties is perceived by the employer as unwillingness or unfitness to exercise specific tasks. Some typical cases are outlined below.

#### **A) Refusal of the Municipality to assign specific tasks to a sanitation worker with mental disability**

The Ombudsman investigated a complaint regarding the refusal of a Municipality of Attica to proceed to the appointment of a person with a pervasive developmental disorder and mild intellectual disability to a position of regular personnel in the branch/specialty of Sanitation Workers with Compulsory Education. The person at issue had participated in the No. 3K/2018 ASEP announcement for staff recruitment in Local Government Organizations and, based on the temporary table of results, he was initially employed as a sanitation worker in a different Municipality for a period of 19 months, without any indication of inadequate performance of his duties being reported during that period. During the procedure of his appointment to the Municipality of his final placement, the person was referred to the competent First Degree Health Committee to receive the necessary opinion on his fitness to exercise the entirety of the duties associated with the position. The Committee subsequently referred him to the Director of the Psychiatric Clinic for further examination.

The latter deemed that the person in question was unfit to respond to the tasks of manual refuse collection, refuse collection as a member of the crew of a refuse collection vehicle, and the collection of bulky objects, but he was fit to work on

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30. Point θ' of para. 2, Art. 2 and Article 5 of L. 4443/2016

31. Article 3 para. 1 of L. 4443/2016, points α' and γ'.



the manual cleaning of public spaces, using the appropriate equipment provided by the municipality, given that he had performed this type of work in the past. It was also certified that this type of work would contribute to the further improvement of his mental health. However, the Committee subsequently opined that the person in question was not able to perform the entirety of the duties associated with the position and the Municipality refused to consider the possibility of at least employing him in tasks that he could demonstrably carry out. Besides, the Municipality failed to prove that there was no need for public space cleaners or street cleaners.

Furthermore, the Municipality deemed that the possibility of adjusting the duties of the position to the abilities of the interested party and assigning to him only those duties which he was fit to perform would constitute an unlawful act towards other candidates who would not participate in a corresponding announcement. **However, since the applicant was selected as an appointee based on the contested announcement, the Ombudsman is of the opinion that the failure to take appropriate measures to ensure his ability to respond to specific tasks of the announced position constitutes discrimination against him in accordance with the relevant legislation in force<sup>32</sup> and, in this respect, failure of the Municipality to fulfil its legal duty.**

In conclusion, the competent department did not prove that it had exhausted every possibility to render the recruitment of the person concerned possible, taking into consideration that he was demonstrably capable of accomplishing specific tasks associated with the announced position. Following the above, the Ombudsman drew up a Findings Report asking from the Municipality to proceed to the completion of the recruitment procedure of the person concerned (Case File 281053).

#### **B) Duty of care of the employer regarding the adoption of reasonable accommodation measures**

A female employee suffering from epilepsy was placed as a worker in an oil processing and standardization company, initially working in manufacture section and subsequently in barrel washing section. The employee stated that she had notified the company in advance of her medical condition and the need to remain indoors while performing her work, but the company did not receive the supporting documents she provided in relation to her condition and later assigned her to

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32. Art. 5 of L. 4443/2016



work outdoors. The employee alleged that her employment outdoors, under the sun, resulted in the deterioration of her medical condition and the increase in the dosage of the medication she was taking.

During the labour dispute that was conducted, the employer argued that the main reason for her dismissal is that she “was continuously asking for a post-position change because she could not cope”. The employer then argued that he had never been informed of the employee’s health problems, claiming that he was first made aware of them by the relevant Labour Relations Inspectorate and that her only request, which was accepted by the company, was to work in the morning shift, without invoking any health reasons or submitting medical evidence. Regarding her sun exposure, the employer argued that it was indirect, given that she was working under a shed, while the amount of sunshine during those specific months was limited.

**The Ombudsman concluded that, although the employer claimed not to have been aware of the employee’s health problem prior to the termination of the employment and the filing of the complaint to the competent Labour Relations Inspectorate, he did not prove that he had exercised his duty of care by considering the adoption of the necessary reasonable accommodation measures, given that the employee repeatedly requested a change of position due to inability to perform her duties.**

Furthermore, taking into account that a) the employee did not wish to return to her work, b) working in an outdoor covered area during the months of March-May, in an area where the average temperature does not exceed 19 and 24 degrees Celsius respectively and the sunshine is sporadic, does not amount to exposure to sunlight, i.e. to conditions that may lead to the deterioration of the concerned person’s health and c) the fact that the medical certificates presented by the employee did not indicate a deterioration in her health, the Ombudsman’s suggestion to the Labour Inspectorate was to address recommendations to the employer as to the scrupulous observance of his duty of care and compliance with non-discrimination legislation, as well as the adoption of measures of reasonable accommodation (Case File 283938).

#### 5.4. Affirmative action

Affirmative action is linked to the ideal of substantive equality and the recognition that formal equality, in the sense of abstention from discrimination, is not sufficient on its own to remove the disadvantage experienced by persons with disability as a result of systemic discrimination. In the field of employment - based on



the reports submitted to the Ombudsman - the special quota in favour of persons with disabilities regarding their recruitment as employees of the State and the public sector in general has been the measure of affirmative action of the highest interest for this group of people for decades now, followed by the provision of incentives to private sector employers to employ people with disabilities.

### **A) Implementation of the provisions of Law 2643/1998**

The recruitment procedure which is based on L. 2643/1998 and the special quota in favour of persons with disabilities regarding their recruitment as employees of the State and the wider public sector had not been implemented since 2014, thus resulting in a large number of positions intended for this category of people remaining vacant. Following reports submitted since the end of 2020, **the Ombudsman, addressing the Ministry of Labour, indicatively referred to some of these posts that had been originally granted over the last three (3) years and asked to be notified of the actions that the Ministry intended to take, within the framework of its competences, to fill all the posts designated for this specific category of persons.**

The procedure for filling the positions was initiated by the publication of the relevant decision<sup>33</sup> of the Minister of Labour and Social Affairs on the 28th of July 2021, and the submission of applications took place between the 1st of September and the 5th of October 2021.<sup>34</sup>

### **B) Active employment policies and Manpower Employment Organization (OAED)**

The National Action Plan for the Rights of Persons with Disabilities and, in particular, Objective 14 (Employment and Occupation for everyone), provided for the amendment of the Funding Program for Enterprises and Employers for the employment of 2,000 unemployed individuals from Vulnerable Social Groups in full-time and part-time jobs. The conferred incentives included an increase in the grant for the creation of new job positions from 70% to 90% of the total costs, whether they are wage-related or not (including Christmas, Easter bonuses and leave allowance for employees of the private sector), an increase in the maximum granted amount (from 700 to 800 Euros for a full-time job position and from 350 to 400 Euros per month for a part-time job position), and finally, the removal of

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33. 52310/18.7.2021 (B' 3362)

34. See Special Report 2020 on the Rights of persons with disabilities, p. 55.



the requirement for a two-month registration in the unemployment registers or the obligation that the employment of the non-long-term unemployed continues after the termination of the grant, so all registered unemployed people from Vulnerable Social Groups can be employed.

By virtue of the new provisions, the possibility of recruiting unemployed persons with disabilities was extended beyond Municipal/Regional enterprises and private sector businesses to public enterprises, institutions and organizations that perform economic activities. In addition, companies and cooperatives that are included in the program in question were given the opportunity to join the Program for Ergonomic Arrangement of the workplace as well. The goal of the program was both to increase the filling rate of the posts with a corresponding decrease in the number of persons with disabilities who are registered as unemployed and to integrate the disability perspective into the entire spectrum of OAED policies.

After the amendments<sup>35</sup> made to No. 38839/838/22.08.2017 (B' 2963) joint ministerial decision "Specific Employer Support Program for the recruitment of 2,000 unemployed Persons with Disabilities, Persons who have recovered from Substance Addiction, Ex-prisoners, Juvenile Delinquents or Young Persons at Social Risk and Funding Program for 50 places for the Ergonomic Arrangement of the Workplace for Persons with Disabilities", the categories of beneficiaries of the Program were expanded, thus including unemployed female victims of gender-based abuse, victims of domestic violence, victims of human trafficking and persons registered in the National Registry of Minors of the National Center for Social Solidarity (EKKA) who continue to reside in Child Protection and Childcare Units after reaching adulthood.

**Male and female Unemployed persons with disabilities filed complaints to the Greek Ombudsman, as they had attempted- without success - to inform Local Government of first and second degree enterprises as well as enterprises and bodies owned by the State about the Program for the recruitment of Persons with Disabilities, in order to be included. The competent departments of OAED informed persons with disabilities that they should search on their own for the enterprises that may be interested in employing them. However, the program was not progressing satisfactorily, resulting in the exacerbation of the economic deprivation and precariousness of unemployed persons with disabilities.**

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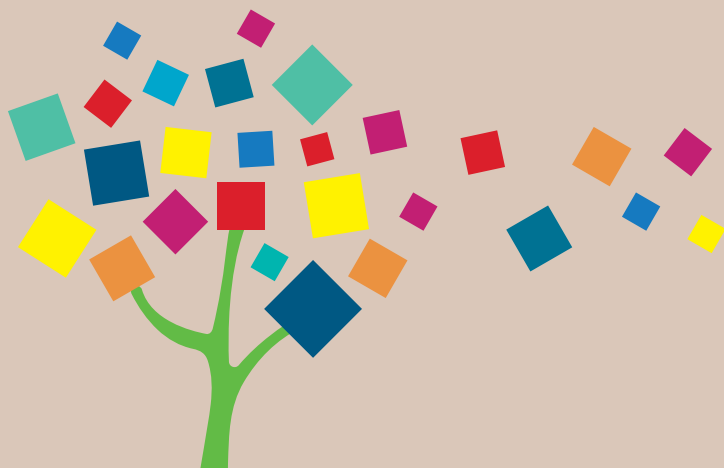
35. No. 2551/43/17.01.2019 (B' 66), 27354/622/06.07.2020 (B' 2800), 42632/22.6.2021 (B' 2711), 52170/1317/05.03.2021 (B' 899) and 4808/18.1.2022 (B' 137) Decisions.



The Greek Ombudsman addressed the relevant ministers, underlining that:

- The specific employer support Program for the recruitment of unemployed Persons with Disabilities, Persons who have recovered from Substance Addiction, Ex-prisoners, Juvenile Delinquents or Young Persons at Social Risk appears to be currently addressed only to private enterprises and not to public institutions and organizations, leaving persons with disabilities unemployed for a longer period of time. **Public bodies and Organizations are not aware of the existence of the program and cannot participate in it**, as they should make timely provision for their participation and make advance payment of the required contributions and expenses before receiving the grant.
- It is essential **to consider the possibility of implementing the Program specifically targeting persons with disabilities and to develop an appropriate strategic plan of awareness-raising and information** of the beneficiary bodies. Programs addressed to all Vulnerable Social Groups cannot be effective without the implementation of a specific information/awareness policy. The dissemination of the Organization's programs to employers requires cooperation with other bodies, while the beneficiaries need to understand the detailed arrangements of the benefits to be provided as well as the essential framework of the intervention especially concerning people with disabilities.
- OAED can utilize the extensive experience it has acquired through the implementation of programs of public interest and develop an information policy that will not be limited to a single program for the Creation of New Job Positions, which mainly aims at private enterprises. In addition, **people with disabilities should occupy positions which are appropriate to their qualifications**, rather than simply filling a job opening. It is required that the approved resources and the necessary means are ensured so as OAED is capable **of proceeding to the mapping of the registered unemployed population of persons with disabilities according to age, gender, education, disability category /degree of physical and mental ability**, within the framework of its active policies.

After five amendments to the relevant Public Call, persons with disabilities become aware that the Municipalities no longer dispose of legal entities under private law that regularly engage in economic activities. Several public enterprises have suspended their operation, while Development Agencies, which had demonstrated interest in employing persons with disabilities, are not included in the program in question. Finally, following communication between the Ombudsman and the competent OAED offices, it was revealed that private sector enterprises would prefer to employ people from the rest of the social categories included in the program rather than persons with disabilities (Case Files 278289, 305417).



## 6 Adequate standard of living and social protection

**Article 28 of the CRPD** binds States Parties to recognize the right of persons with disabilities to an adequate standard of living, as well as the right to the continuous improvement of their living conditions. States shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the ground of disability. They must also recognize the right of persons with disabilities to social protection and to its enjoyment without discrimination on the ground of disability, and they shall also take appropriate steps to safeguard and promote the realization of this right.

Issues related to the social protection of persons with disabilities have always constituted a significant part of the cases handled by the Ombudsman. Some of the Ombudsman's most typical findings or interventions for the year 2021 are outlined below.

### 6.1. Insufficient cooperation between OPEKA and the Electronic National Social Security Entity (e-EFKA) and problems in processing of applications for granting financial assistance

After reviewing a large number of complaints filed by citizens, the Ombudsman has identified deficiencies in the cooperation and coordination of the competent departments of OPEKA and the Electronic National Social Security Entity





(e-EFKA) regarding the granting of disability benefits and allowances, while it has also detected a significant deficit of the adequate and complete information of citizens as regards the requirements and type of benefits they are entitled to by each institution.

Specifically, there have been noticed **excessive delays in processing applications** for granting welfare financial assistance in cases of severe disability, paraplegia - quadriplegia, etc. by OPEKA, owing to the delayed certificates, issued by the corresponding offices of the Electronic National Social Security Entity (e-EFKA), for non-entitlement to insurance right for disability pension, non-institutional care benefit, etc. Consequently, persons with disabilities are deprived of welfare benefits necessary for their living for a significant period of time, even exceeding one year.

Furthermore, due to insufficient information or incorrect instructions provided by the institutions, as well as citizens' unfamiliarity with the complex and elaborate procedures and the legislative framework that regulates the granting of insurance and welfare benefits, **it has been often noticed that persons with disabilities submit an application for welfare benefit/disability financial assistance to OPEKA while they satisfy the insurance conditions for receiving disability pension, non-institutional care benefit or total disability benefit by the insurance institution. Conversely, it has been noticed that, instead of addressing OPEKA, citizens refer to the insurance institution without satisfying the insurance conditions**, only to note its lack of jurisdiction after a particularly long period of time (often exceeding one year). The competent body finally grants the benefit yet beginning from the date on which it started processing the case and not from the initial date of submission of the application to the non-competent body, thus resulting in the beneficiaries losing particularly large amounts of benefits. The Ombudsman has brought the above to the attention of the relevant departments and is awaiting their actions.

## **6.2. Excessive delays in issuing decisions granting disability pensions and allowances**

This year as well, the Ombudsman received a significant number of reports from citizens complaining about the excessive delays in issuing decisions granting disability pensions, non-institutional care benefits and total disability benefits. From the investigation of the reports it was found out that the duration of the decision issuance procedure by the Electronic National Social Security Entity (e-EFKA) exceeded a year in the majority of the reported cases, while there were also cases



of persons insured by the former insurance institutions OAEE and OGA, in which the delay even exceeded two years. Additionally, excessive delays were found in cases of extension of disability pensions, in which, however, no re-assessment of insurance requirements is called for, but rather they constitute a simple administrative procedure of issuing a certificate of extension of the insurance benefit.

The delays were further exacerbated during the current transitional stage of the merger of certain units and the transfer of competences, within the framework of the restructuring of the Electronic National Social Security Entity (e-EFKA), without having provided for sufficient staffing, appropriate IT support and training of the staff as to the handling and processing of applications. The Ombudsman's mediation in a significant number of cases was successful, given that long-pending cases were resolved. Furthermore, in the context of protecting the right of persons with disabilities to an adequate standard of living, the Ombudsman pointed out to the Electronic National Social Security Entity (e-EFKA) the necessity of taking specific measures, including the issuance of explanatory instructions were deemed necessary, the simplification of procedures, the integrated electronic management of requests, the generalized granting of temporary benefits etc.

### 6.3. Tax treatment of pensions from abroad

A pensioner who receives two disability pensions, namely a main pension and a supplementary one, by insurance pension institutions in Germany, reported to the Ombudsman that the Tax Office refused to grant him the tax exemptions which were provided for the corresponding earnings of persons with disabilities in Greece, because his income was derived from abroad.

In its letter to the Independent Authority for Public Revenue (AADE), the Ombudsman requested information regarding the tax treatment of pensions, recalling as a preliminary point that Greece has signed a Convention for the Avoidance of Double Taxation with the Federal Republic of Germany, which regulates the taxation of pensions, income from employment, dividends, interest and royalties, etc. Pursuant to the above Convention, pensions and periodic cash benefits acquired by a resident of Greece and derived from sources within Germany are taxable only in Greece (and vice versa), while pensions/periodic cash benefits paid by the Greek State are taxable only in Greece and pensions/periodic benefits paid by the German State are taxable only in Germany.

The Ombudsman's letter was forwarded to the Directorate of Direct Taxation of AADE, which replied that, based on the applicable legislation and the relevant de-



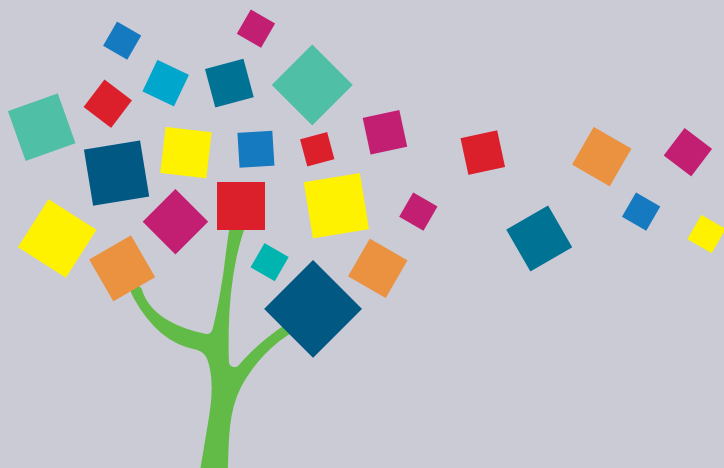
cision<sup>36</sup> of the Chief Executive of AADE, it has been stipulated, inter alia, that “(...) salaries, pensions and fixed remuneration granted to persons with disabilities with a disability percentage of at least eighty percent (80%) are exempted from tax, in accordance with indent ε’ of para. 2, Article 14 of the Income Tax Code. In the absence of an explicit distinction in the law, these incomes are exempted from tax, regardless of whether they are acquired by a tax resident or non-resident of Greece, as long as the specified supporting documents are submitted. In addition, non-resident taxpayers who acquire income in Greece and have severe mobility disabilities of a degree of eighty percent (80%) or higher or persons with total blindness are exempted from the special solidarity contribution for all their categories of income as long as they hold the specified supporting documents, since para. 2 of article 43A of the Income Tax Code makes no distinction between domestic and foreign tax residents.”

**Based on the response of AADE, it is evident that in the absence of an explicit distinction in the relevant provisions, the income derived from a pension acquired from abroad by a domestic tax resident who suffers from total blindness or severe mobile disability, with a disability percentage of 80% or higher, is exempted from tax and special solidarity contribution.**

Ultimately, a new clearance of the tax declarations was carried out by the competent Tax Office and the person concerned was granted the exemptions provided for (Case File 294947).

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36. A.1070/2020 (Online Publication No.: 699E46MP3Z-Ξ5Δ)



## 7 Pandemic

### 7.1. Mandatory vaccination of children with disabilities for their inclusion in open social care structures

The Ombudsman engaged with the issue of the mandatory vaccination of children and adults with disabilities, which was set as a precondition -in accordance with the provisions of the law and the relevant circular- for their inclusion in Creative Activity Centres for Children and Persons with disability (KDAP AmeA) and in Day Care Centers (KDIF). Following relevant reports from parents, the Ombudsman, forwarded a document to the Ministry of Labour and Social Affairs, highlighting the legal issues that arise, regardless of the adopted opinions as to the issue of vaccination against COVID-19.

The Ombudsman pointed out to the persons filing the report that, insofar as the issue of vaccination entails scientific medical judgement, it falls outside the Ombudsman's competence. Moreover, as it was explained to the parents, the competence of scientific judgement on vaccination, its risk and the potential consequences it entails, lay with the National Committee on Vaccination, which had already delivered its opinion based on the scientific data available up to that time. **However, the legislator's intention to render the vaccination of minors with severe disabilities mandatory -in contrast to the provisions applicable to the persons belonging to the same age group as well as parts of the adult population- raised the Ombudsman's concern.**



In particular, the legal and policy-related concerns raised regarding the mandatory nature of vaccination by virtue of statute on imperative grounds of public health protection for minors and adults with disabilities who receive services in open care facilities (KDAP AmeA and KDIF), pertained to the following aspects:

- the issuance of a circular does not substitute the prescribed- by means of legislative delegation- establishment of a regulatory framework,
- the fact that the National Committee on Vaccination opined that a specific age group (adolescent children) can be vaccinated does not automatically render vaccination mandatory for a specific category of children, without even examining the particularities of the vulnerable and heterogeneous population of children with disabilities,
- moreover, the same committee highlighted that the informed consent of the parents is necessary for the vaccination of children, as stipulated by the Code of Medical Ethics regarding minors,
- the wording of the provision shows that its primary purpose was to protect persons who are under the State's care and live together in closed -rather than open- social care facilities on a permanent basis,
- in any case, regarding persons with disabilities who are not under the State's care and receive social care services in open care facilities, the legal responsibility for making decisions falls on those having parental responsibility or legal guardianship and care over them, if not the persons with disabilities themselves, and not on the representatives of the State,
- the provision indirectly includes minors with disabilities without making explicit reference, while for any similar measure concerning children, increased protection should be ensured based on the best interest of the child,
- **the mandatory vaccination against COVID-19 does not apply to all minors, but only to children with severe disabilities, who are subject to discrimination on the basis of their disability**, as the minor population is disproportionately exposed to the possible risks of vaccination, contrary to what is prescribed by legislation of superior status<sup>37</sup>,
- the mandatory nature of vaccination against COVID-19 has not been imposed on the entire adult population "on imperative grounds of public health protection" during the pandemic, which renders the imposition of mandatory vaccination on minors -who are in need of increased protection, are in the devel-

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37. L. 2101/1992, L. 4074/2012



opment phase and are more vulnerable than the adult population- legally and politically precarious,

- children with disabilities may suffer from specific neurological or other accompanying diseases and therefore the consequences of their vaccination are not yet certain, which makes it difficult to adequately ensure their protection,
- no account has been taken of the specific consequences that the implementation of such a provision of major social importance may have for persons with disabilities, in accordance with the legislation, which stipulates that all legislative provisions must be compatible with the Convention on the Rights of Persons with Disabilities<sup>38</sup>,
- the personnel of social care facilities are required to be vaccinated; therefore, it is not sufficiently justified how the unvaccinated children with disabilities who come into contact only with vaccinated personnel in KDAP AmeA or KDIF pose a greater risk to public health than children attending schools, especially given that the vaccination of teaching personnel is not mandatory, and the overcrowding is much greater,
- any exclusion from support facilities of open social care during the pandemic is highly risky for children with disabilities, as these facilities provide support for the persons with disabilities and their families against potential social exclusion, neglect, violence and institutionalisation,
- there is no provision for the vaccination of the personnel of corresponding social care facilities for children without disabilities, such as KDAP,
- the preventive measures against coronavirus are not coherent, since the same children who are required to be vaccinated in order to be admitted to KDAP AmeA, attend general or special schools, where the number of children -in and outside the classroom- is larger, yet there is no relevant vaccination obligation in place for children or teachers.

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38. L. 4074/2012, L. 4488/2017



The Ministry of Labour and Social Affairs seems to have partially accepted the Ombudsman's view. Following the issuance of an amending ministerial decision<sup>39</sup>, the grounds for exemption of natural persons from vaccination against COVID-19 were extended, beyond specific diseases, through the provision (Article 1 para. 2) that the exemption from the implementation of the mandatory measure of vaccination against COVID-19 "... indent ζ) applies to Persons with disabilities who are unable to undergo the vaccination process for objective reasons related to their actual situation brought about as a consequence of their conditions, such as severe cases of autism and epilepsy, provided that they have a reasoned recommendation from their attending physician and approval by the committees specified in para. 4".

## 7.2. Request for vaccination of children with severe disabilities against COVID-19

The Ombudsman received a report from a parent of a child with severe disability concerning the failure of the Ministry of Health and the National Public Health Organization to respond to his request for the inclusion of his child in the groups of persons at high or increased risk regarding their vaccination against COVID-19. The parent was particularly concerned that his child would be unable to recover in the event of a serious illness, due to the child's multiple medical conditions, his recent bout with pneumonia and the subsequent respiratory problems due to Decubitus.

The Ombudsman addressed the General Secretariat of Public Health and the General Secretariat of Health Services (Independent Department for the Protection of the Rights of Health Service Recipients) in writing, requesting that the matter will be examined immediately, given that the child was a minor and was therefore not included in the electronic platform for securing vaccine administration in the upcoming period of time. The child was 17 years old, with a lifelong disability percentage of 96% based on a diagnosis of severe intellectual disability, spastic quadriplegia on grounds of infantile cerebral palsy, mobility disability, visual disability and chronic epilepsy.

Without interfering with the technical medical matter and based on the increased vulnerability of the child (due to the co-existence of multiple conditions, the complete dependence of its care, the inability to protect itself and to comply with

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39. Δ1α/Γ.Π.οικ.50933/13.8.2021 (Β' 3794), Δ1α/Γ.Π.οικ.67614/29.10.2021 (Β' 5026).



hygiene requirements autonomously, the impossibility of timely information in the event of experiencing any symptoms due to non-verbal communication, the difficulties of treatment in a healthcare facility in case of infection during the pandemic) as well as in view of the child's impending reaching adulthood, the Ombudsman requested that **the possibility of including the child in the priority group of "people with underlying diseases of high risk (regardless of age)" and/or in the group of "people aged 18-59 years with underlying diseases of increased risk<sup>40</sup>" will be considered.**

Indeed, the Ministry of Health contacted the parent by telephone and the child immediately received the first dose of the COVID-19 vaccine. Subsequently, however, there were considerable time delays in administering the next doses of the vaccine.

### **7.3. Imposition of fines on people with mental illnesses due to containment measures during the pandemic**

The Ombudsman received reports (Case Files 294874, 295154, 298799, 303854) from family members of people suffering from mental illnesses, who were made aware of the fines imposed on their relatives upon notification by the competent Tax Offices (DOY). In several cases, following the submission of relevant objections by the relatives of the patients and the disclosure of the appropriate medical documents, Hellenic Police authorities proceeded to the withdrawal of the imposed fines or the issuance of an Individual Deduction Sheet (AFEK), if the fine had already been forwarded to the competent Tax Office. However, there have been cases of Police Departments refusing to withdraw such fines or even making medical judgements, stating that the person showed no signs of mental disorder at the time of the fine imposition. Finally, some Police Departments invoked the late submission of objections, despite the fact that the relatives of the patient had only been notified of the fine at the time they were contacted by the competent Tax Office.

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40. Including "severe neurological diseases which affect respiratory function, cerebral palsy, epilepsy..." as well as "persons with severe disability which is not due to high or increased risk diseases, conditions for which vaccination priority has already been set".

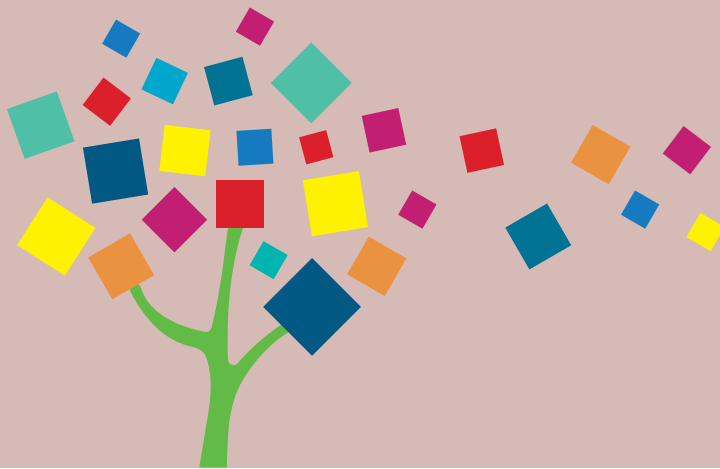




**The Ombudsman’s intervention focused on emphasizing the explicit wording contained in the relevant document of the Directorate of General Policing of the Hellenic Police regarding the involvement of persons with mental illnesses in emergency situations, where the attribution of the act to the offender is lifted.**

#### **7.4. Completion of the procedure for the recruitment of a successful candidate with disability after the Ombudsman’s intervention**

The Ombudsman intervened in order to finalize the procedure for the recruitment of a successful candidate in an ASEP posts announcement. This person, being a person with disability himself as well as the caretaker of his brother, who is also a person with disability, was unable to respond to three consecutive invitations to take the oath, both for personal health reasons and because of the additional health risk posed by the COVID-19 pandemic. The Municipality where he was recruited considered that the right to appoint the person concerned had been lost. The Ombudsman pointed out that the Municipality should take into account the disability aspect and the provisions of Article 27 of the UN Convention on the Rights of Persons with Disabilities regarding access to employment and occupation, as well as the limited future employment opportunities available to the person concerned. Following the intervention of the Ombudsman, the Municipality re-invited the successful candidate to take the oath and he has now assumed duties in the Municipality (Case File 282299).



## 8 National Recovery and Resilience Plan “Greece 2.0”

Pursuant to Article 17 of Regulation 2021/241 of the European Parliament and of the Council of 12 February 2021, Greece has drawn up a national Recovery and Resilience Plan, entitled “Greece 2.0”.

The Plan received a positive opinion by the European Commission and was approved by the Economic and Financial Affairs Council of the European Union (Ecofin). The Financing Agreement was ratified by L. 4822/2021 (A’135) and includes the utilization of resources of the Recovery and Resilience Fund. The Plan is structured in four pillars (Green Transition, Digital Transformation, Employment-Skills-Social Cohesion, Private Investments and Transformation of the Economy) and includes a combination of reforms and investments, with a completion horizon by the end of 2026.

Among the reforms of the Plan “Greece 2.0” there are several that concern persons with disabilities, mainly in the Pillar “Employment, Skills, Social Cohesion”, and aim at the deinstitutionalization, accessibility, social integration, participation in the labour market and social support which reinforces medical protocols. The provisions included in “Greece 2.0” are intended to complement the actions included in the National Action Plan for the Rights of Persons with Disabilities, which was established in 2020.



Indicatively, the following reforms concern persons with disabilities:

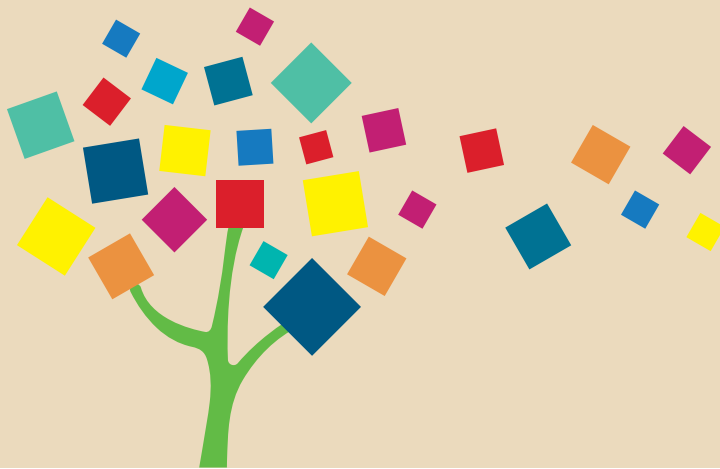
- In the field of **education**, the provision of digital and technological tools for students with disabilities and specific learning needs is planned. The aim is to bridge the digital gap that the digital transformation of education and the digitization of the educational process may cause for children with disabilities, by providing special support and digital equipment.
- Within the framework of the reform of the **health system**, the support of home care for targeted vulnerable groups of patients with chronic disabilities is envisaged. Home care is intended to be combined with parallel support from health care units and concerns children, adolescents and adults with serious chronic health problems that cause long-term or permanent disabilities. The primary aim is to improve the quality of life of patients, while at the same time relieving the national health care system and saving resources.
- The reforms concerning the **social policy and social cohesion** include the support of deinstitutionalization programs for children with severe disabilities or severe mental health problems, as well as utilizing professional foster care. Specifically, the Plan provides for the implementation of a transfer program of adolescents to supported semi-independent living facilities and their further support through skills development programs aimed at their smooth transition into the labour market and society upon reaching adulthood. The reform concerning professional foster care seeks to strengthen the placement of children with disabilities into suitable family environments.
- Also, the Plan envisages reforms and investments aimed **at enhancing social integration, independent living, employment and early childhood intervention for persons and children with disabilities**, through the accessibility and infrastructure support for people with mobility and sensory impairments, the provision of personal assistance for persons with disabilities, the support of social inclusion and early childhood intervention for people with autism spectrum disorders (ASD).
- Especially regarding children, the Plan also provides for a reform aimed at the **comprehensive development of infants and pre-school children** through the design of curriculum for preschool education structures. The program, which will aim at the development of children through multiple and varied stimuli, will also include the creation of psycho-technical tools for the early detection of disorders. This reform is also linked to early intervention for children on the autism spectrum and, as an action, it aims at the establishment of effective protocols to support psycho-emotional development, improve the quality of life and social integration of children.



- As far as the **personal assistance** is concerned, the institutionalization of the "Personal Assistant" and the subsidization of an integrated pilot program for the provision of personal assistance to persons with disabilities, with the ultimate goal of supporting them in professional and social integration, is considered essential. The same measure is also expected to bring about positive results in the recognition and safeguard of the declared work of persons who provide corresponding services to persons with disabilities.
- The Plan also provides for the **digital retraining of persons with disabilities in new technologies**, the creation of a Single Digital Portal for access to Social Protection, a Digital Portal for disability and a Disability Card as well as the digital transformation of OPEKA structures, with the aim of simplifying and facilitating the access of vulnerable citizens - and especially of persons with disabilities - to social care services and benefits.

The Ombudsman, as a Framework for the Promotion of the Convention on the Rights of Persons with Disabilities, jointly monitors the developments and the envisaged reforms of the Recovery and Resilience Plan, as they relate to the Ombudsman's long-standing interventions to the Administration for the practical enforcement of the rights of persons with disabilities.





## 9 European Union Strategy for the Rights of Persons with Disabilities 2021-2030

At European Union level, persons with disabilities are estimated at around 85 million or 25% of the population,<sup>41</sup> however, they are confronted with significant obstacles when it comes to their access to health services, education, employment, recreational activities, as well as their participation in political life. They are at a higher risk of poverty and social exclusion (28.4%) compared to people without disabilities (18.4%). More than half of the persons with disability stated that they felt that they suffered discrimination in 2019<sup>42</sup>.

The EU shares competence with its Member States in certain policy areas, such as in transport or the internal market, while it has a supporting role in areas where Member States have exclusive competence, such as health, education and culture. In contrast, based on the Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights, the EU is committed to combating discrimination and establishing equality as a cornerstone of its policies. In

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41. Data: EU SILC (Statistics on Income and Living Conditions) and EU LFS (Labour Force Survey). 24.7% of the EU population over the age of 16 are restricted in their activities, 17.7% of them having moderate restrictions and 7% severe ones (S. Grammenos/M. Priestley, 2020: Europe 2020 data and people with disabilities).

42. Special Eurobarometer 493, Discrimination in the EU, May 2019.



addition, The EU, along with its Member States, is committed to promote the objectives of the CRPD, as a Contracting Party.

Finally, in the field of employment and social policies, the European Pillar of Social Rights, jointly proclaimed in 2017 by the European Parliament, the Council and the European Commission, serves as a compass for the EU. Principle 17 of the Pillar underlines that persons with disabilities have the right to income support that ensures their living in dignity, services that enable them to participate in the labour market and in society and a work environment adapted to their needs.

Within the framework of the European Disability Strategy 2010-2020,<sup>43</sup> the EU financially supported and contributed to improving the situation in a number of areas, in particular accessibility for persons with disabilities and promoting their rights by putting disability high on the EU agenda.<sup>44</sup> **Following this Strategy and taking into account the new conditions created for people with disabilities by the coronavirus pandemic, in March 2021 the European Commission published the Strategy for the Rights of People with Disabilities 2021-2030,<sup>45</sup> where the goals for the end of the new decade are defined, focusing on actions that cover all the articles of the CRPD and which the European Commission considers to be fundamental.** The Strategy contains 8 priority areas, 7 main initiatives, almost 60 Commission actions and more than 20 recommendations to Member States.

As priority areas, the Strategy mainly indicates:

- Accessibility as an enabler of rights, autonomy and equality.
- Enjoying European Union rights.
- Decent quality of life and independent living.
- Promoting the rights of Persons with Disabilities globally.
- Efficient delivery of the Strategy.

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43. Commission Communication (COM (2010) 636 final): European Disability Strategy 2010-2020.

44. Commission (SWD (2020) 291 final): Evaluation of the European Disability Strategy 2010-2020.

45. Commission Communication (COM 2021) "Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030" available at <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8376&furtherPubs=yes>



- The provision of standard practices, such as in making the recruitment and promotion process in the Commission and the other EU institutions inclusive for persons with disabilities.

The strategy recognizes that achieving its goals will require a strong commitment by the Member States, by promoting policies and actions that will bring about accessible environments, inclusive education systems as well as health care systems of high quality and effective pathways to fair employment for persons with disabilities. The Commission declares that empowering persons with disabilities to fully participate and contribute to the transition to an inclusive, green and digital economy, society and democracy will reaffirm the EU values. To this end, the Commission invites the European Parliament and the Council to work together and to lead by example in achieving implementation of the CRPD both at EU and national levels.



ISSN: 2944-9766



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