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Report on Annual Conference on Rights of Persons with Disabilities¹

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On 14 and 15 December 2015 the Academy of European Law in collaboration with the European Foundation Centre held the Annual Conference on Rights of Persons with Disabilities (hereinafter referred as CRPD) in Trier, which was aimed at empowering workers with disabilities in the EU labor market through the elaboration of available legal instruments, identified challenges and best practices. The chain of presentations covered Article 27 CRPD, the Council of Europe's and the EU's strategies for empowering workers with disabilities; the definition of key concepts, such as disability, direct and indirect discrimination, reasonable accommodation; national implementation of the EU Employment Equality Framework Directive protecting the rights of workers with disabilities; the innovative and best practices of sheltered and supported employment schemes, as well as, the judicial and non-judicial mechanisms for the protection of the rights of workers with disabilities.

I. Introduction to Article 27 (Work and employment) CRPD

The first speaker, social policy officer at the European Disability Forum, Ms. **Simona Giarratano** opened the conference with her speech on "THE ART. 27 OF THE CONVENTION AND BEYOND: A RIGHTS-BASED APPROACH TO WORKERS' DISABILITIES". She communicated the legal and human rights context and introduced the Convention, explaining the nature, legal characteristics and the significance of the CRPD. Following the general presentation of the CRPD, she continued with the thorough analysis of Article 27 CRPD, emphasizing the government's obligations to insuring just, safe and favorable employment conditions, equal pay, career development and protection from exploitation and compulsory work for persons with disabilities in all forms of employment. Moreover, she stressed the government's responsibilities in playing a leading role in providing good examples through application of employment policies such as quota systems and work incentivisation.

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It is evident that persons with disabilities, even when it comes to employment have no real choice: they are forced to take what they are offered. Besides, as it was stated in the Roy Sainsbury's report of 2015 on Active Citizenship as Labor Market Participation², over 15 percent of persons with disabilities in employment work from home most or some of the time compared to 13 percent of nondisabled persons. Moreover, taking the EU as a whole, 26 percent of persons with disabilities in employment are working part-time compared to 18 percent of working people without a disability (Sainsbury, 2015). Most probably, continued Ms. Giarratano, this situation is caused by the employers' persisting bad attitudes and the belief that employing a person with a disability involves undue burden as a result of required standards of reasonable accommodations. Thus, she suggested that in seeking remedies for this state of affairs, apart from carrying out raising awareness campaigns, Article 27 CRPD should be considered together with Article 9 (accessibility), Article 12 (equal recognition before the law), Article 19 (living independently and being included in the community), Article 20 (personal mobility), Article 24 (education), Article 26 (habilitation and rehabilitation), as well as Article 28 (adequate standard of living and social protection) CRPD.

As it could be expected, Ms. Giarratano's speech raised the question of sheltered workshops legality: specifically, it was asked if sheltered workshops constitute a violation of Article 27 CRPD. In fact, it could be considered as non-violation if a transition towards the open labor market was thought, answered the speaker, but in most cases persons in sheltered workshops do not have choices and opportunities to transfer to an open labor market; consequently, constant violations of equal pay occur, since they are deemed to be in a rehabilitative position.

II. EU stimulation strategies to implement the Art. 27 CRPD

The next keynote speaker, Ms. **Immaculata Placencia Porrero**, Deputy Head of the Unit for Rights of Persons with Disabilities within the Directorate General for Justice, concentrated her speech on the EU strategy for empowering workers with disabilities. She elaborated on the tools and methods of the Disability Strategy review and described how the adoption of the draft of the Accessibility Act will contribute to the improvement of the socio-economic situation of persons with disabilities. In particular, she assured, representation of persons with disabilities in the open labor market will rise substantially if the goods and service market fulfill the EU accessibility standards.

Anna Lawson, Professor of Law and Director of the Centre for Disability Studies, University of Leeds, delivered a presentation on "The NATIONAL IMPLEMENTATION OF EU LEGISLATION AGAINST DISCRIMINATION ON THE GROUNDS OF DISABILITY: A comparative ASSESSMENT," which shed light on the scope of the EU Employment Equality Directive and defined the strategic concepts of reasonable accommodation

² Sainsbury et al. (2015), „Active Citizenship as Labor Market Participation”, see <http://discit.eu/publications>.

and direct and indirect discrimination, explaining the hidden hazards of legal language used by the states to determine the person's need for reasonable accommodation: E. g. the wording 'reduced capacity to work' not only reaffirms an inherent thinking that persons with disabilities are unable to work but also skillfully veils the reluctance of States to providing the necessary support to work to persons with disabilities. The next issue in insuring the application of full and just provision of the reasonable accommodation for persons with disabilities, as it was stated by Lawson, should be seen in differing definitions of disability across social and healthcare systems of state parties: E. g. Germany grants accommodation only in case a person with a disability has a certain percentage of disability. Besides, continuing her presentation she said, some countries, such as Cyprus, Poland and Netherlands provide accommodations to persons with disabilities only when they request one, still others, like the UK, define disability but maintain list of exceptions: E. g. An autistic girl hit her teacher and other kids at school and got banned from the school because it is an exception, not a disability. In her final remark, she noted that reasonable accommodation is a dynamic concept, the clarification of which could only be possible through further law cases.

A number of questions has been awaiting the speaker upon the conclusion of the presentation, one of which was: "Is there a legal protection against discrimination by association with an individual with a disability?"

In fact, there were numbers of attempts to bring associative discrimination³ issue into legal discourse. The vivid example of which, is the case of **S. Coleman vs. Attridge Law of 2008** (2008 Case C-303/06), the ruling of which was given before the ratification of the CRPD by the EU. In this case, The European Court of Justice (ECJ) has held that under the Framework Employment Directive direct discrimination and harassment can be illegal if they are against someone associated with the disabled person, e. g. the carer of a disabled child. This has been implemented in the Equality Act of 2010. Nevertheless, in the case of **Hainsworth vs. the Defense Ministry of 2014** (2014 EWCA Civ 763), the Court of Appeal of England and Wales decided that the reasonable adjustments duty only applies when the worker is disabled, not someone associated with her/him, even after considering the case in the light of the CRPD.

III. Quantitative overview on sheltered and supported employment schemes

The first half of the second day was dedicated to showcasing how the key international and European policy and legal tools could turn the right to employment of persons with disabilities into reality. Thus, the line of presentations on the practical side of the discussed legal concepts has been opened by **Vahé Nafilyan** and **Rafael Chavez Avila**, who presented two studies, the first completed by IES for the European Parliament and the second one conducted by CIRIEC for ONCE Foundation. Both studies measured

³ ECJ C-303/06 (ECLI:EU:C:2008:415) 17. July 2008, S. Coleman vs. Attridge Law und Steve Law.

the cost-benefits for sheltered and supported employment schemes. On the one hand, the IES' study outlined the existing policies at European level supporting employment for persons with disabilities (e. g. sheltered workshops, reasonable accommodation, alternative labor market services and universal design). On the other hand, the CIRIEC's study revolved around the Spanish model of Special Employment Centers and their social economic effect (with the tangible examples of three successful enterprises: Ilunion, Gureak, la Fageda).

IV. National and international employment strategies and best practice projects

The following two speakers presented cases of regional and national job strategies. Ms. **Maria Montefusco**, in her turn, discussed the Nordic prospective, explaining how the Council of Nordic Cooperation is carrying out its action plan on disability and what challenges it encountered.

Then, **Jörg Bungart** from the German Association for supported Employment went on talking about the German sheltered workshops, mentioning that in Germany there are 682 sheltered workshops with more than 306.000 employees/trainees with disabilities and that the transition rate in these sheltered workshops may vary from 0.2 percent to 5 percent. Besides, he gave details of German expertise in supported employment, bringing up two positive cases of inclusion of young persons with disabilities in the open labor market.

Continuing with best practices, **Michel Fembeck**, who manages the Zero Project⁴, a project the main goal of which is to collect the most innovative practices and policies on disability, moderated a panel during which two further speakers presented the employers' point of view. While Ms. **Susan-Scott Parker**, the founder and chief executive of Business Disability Forum⁵, drew on her experience of effective business mobilization around the economic and social inclusion of persons with disabilities worldwide, Mr. **Stefan Tromel** conveyed the business advantages of employing persons with disabilities and pointed out the challenges facing them in convincing potential employers of diverse workforce advantages. Especially, he underlined that there is a crucial need for advice on reasonable accommodation. Therefore, they are currently working on an ILO guide on reasonable accommodation. Furthermore, he informed that the ILO Global Business & Disability Network has launched the Business Charter on Disability⁶, which has already been signed by 11 multinational companies.

⁴ See <http://zeroproject.org/>.

⁵ See <http://businessdisabilityforum.org.uk/>.

⁶ See <http://www.businessanddisability.org/index.php/en/about-the-network/charter>.

V. Strategies to insuring the access to justice

Finally, the conference was culminated by the interventions of Ms. **Martha Stickings** from the Fundamental Rights Agency (FRA)⁷, who focused her speech on EU and national individual petition and complaint mechanism; and Mr. **Juan Manuel Fernandez Martinez**, a Spanish judge and president of the Justice and Disability Forum⁸, who delivered a speech on “THE ROLE OF NATIONAL JUDGES IN ENSURING THE RIGHTS OF WORKERS WITH DISABILITIES”, that was meant to offer some hints on the position of the ECJ on the CRPD and provided clarification on the role of national judges in ensuring the rights of workers with disabilities. In particular, he mentioned that the ECJ recognizes the CRPD as the part of the European legal framework and accepts its concept of disability and reasonable adjustment. However, it denies that the CRPD produces direct effect. Hereby, he continued, the Court of Justice of the EU takes into consideration the legal value of interpretation of the CRPD made by the member states of the EU. Besides, he added that it differentiates between illness and disability, but it accepts that an illness, under certain conditions, constitutes a disability, regardless of whether or not it is curable. It maintains however that, the limitation that the illness causes must be of a long or uncertain duration, in order to be considered as a disability. Moreover, the Court of Justice of the EU recognizes that a person's condition of disability does not depend on their own greater or lesser efforts to overcome the limitation in question. While quoting the Art. 12 para. 4 and 5 (Equal recognition before the law) CRPD and Art. 13 para. 1 and 2 (Access to justice) CRPD, Martinez emphasized that the State parties are responsible for insuring the full realization and applications of these rights.⁹

Following Martinez's explanation of state parties obligations in implementation of the rights enshrined in the CRPD, a judge from Northern Ireland raised the question of right to free trial: revealing that in Northern Ireland persons with disabilities often have no access to justice due to the amendment of the Northern Ireland law, according to which all legal procedures are to be paid for, she asked the speaker if there is a legal tool at the EU level that could obligate the EU member states to reconsider the law on access to justice and provide effective remedies with regard to marginalized groups of society. While the speaker did not offer a direct solution, he suggested that every individual seeking for effective legal remedy but cannot afford it, shall be instructed to consider non-judicial procedures that are usually free of charge, simpler and more accessible in order to obtain redress. And what is more, he concluded, both the CJEU and the ECtHR accept the validity of non-judicial dispute mechanisms so long as the decisions

⁷ See <http://fra.europa.eu/en>.

⁸ See <http://www.poderjudicial.es/cgpj/en/Subjects/Justice-and-Disability/Presentation-of-Justice-and-Disability-Forum/>.

⁹ See JUDGMENT OF THE COURT (Second Chamber) 2013, joint cases C-335/11 and C-337/11
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=136161&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=304756>.

of such bodies may ultimately be supervised by a judicial body and so long as the alternative mechanisms themselves conform to general requirements of fairness.

Unfortunately, according to the research stated in the report of the European Union Agency for Fundamental Rights on access to justice of 2010, in many EU member states the high amount of legal costs, which mainly includes attorney and court fees, often prevent access to justice (FRA Report, 2010). This was also confirmed by the UK Lord Justice Jackson's report on the rules and principles governing the costs of civil litigation, where he states that: "in some areas of civil litigation costs are disproportionate and impede access to justice." (CEND Report, 2009). Undoubtedly this situation has a highly negative effect on the execution of the equal right of access to justice for persons with disabilities, stipulated by the Art. 5 para. 1 and 2 and Art. 13 para. 1 CRPD as they are often reported to be living in poverty or below the poverty lines. Additionally, as it was stated by the Council of Europe: "the imposition of fees on the parties to proceedings that would de facto prevent their access to justice might give rise to issues under Article 14, paragraph 1. In particular, a rigid duty under law to award costs to a winning party without consideration of the implications thereof or without providing legal aid may have a deterrent effect on the ability of persons to pursue the vindication of their rights under the Covenant in proceedings available to them." (Report, 2015)¹⁰. Correspondingly, the European Court of Human Rights has underlined that court fees that are payable in advance of instituting proceedings should not prove such a financial burden as to prevent or deter applicants from exercising their right to a remedy (FRA Report, 2010).

References:

COUNCIL DIRECTIVE 2000/78/EC OF 27 NOVEMBER 2000 ESTABLISHING A GENERAL FRAMEWORK FOR EQUAL TREATMENT IN EMPLOYMENT AND OCCUPATION. Retrieved from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>

COMMITTEE ON EQUALITY AND NON-DISCRIMINATION REPORT (31 March 2015) ON EQUALITY AND NON-DISCRIMINATION IN THE ACCESS TO JUSTICE. Retrieved from: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21619&lang=en>

EUROPEAN ACCESSIBILITY ACT. Retrieved from: <http://ec.europa.eu/social/main.jsp?catId=1202&langId=en>

¹⁰ Council of Europe, Doc. 13740 (2015), <http://semanticpace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnNvcveG1sL1hSZWYvWDJILURXLWV4dHluYXNwP2ZpbGVpZD0yMTYxOSZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdC9QZG9vWFJiZi1XRC1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTIxNjE5>.

FUNDAMENTAL RIGHTS AGENCY REPORT (2010) ON ACCESS TO JUSTICE IN EUROPE: AN OVERVIEW OF CHALLENGES AND OPPORTUNITIES. Retrieved from: http://fra.europa.eu/sites/default/files/fra_uploads/1520-report-access-to-justice_EN.pdf

LORD JUSTICE JACKSON REPORT (2009) ON CIVIL LITIGATION Costs. Retrieved from: <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Reports/jackson-final-report-140110.pdf>

Roy Sainsbury and Edmund Coleman-Fountain, FINAL REPORT (28 July 2015) ON ACTIVE CITIZENSHIP AS LABOUR MARKET PARTICIPATION. Retrieved from: <http://discit.eu/publications>

Court of Justice of the European Union (2013) ECLI:EU:C:2013:222, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=136161&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=304756>

UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES. Retrieved from: <http://www.un.org/disabilities/convention/conventionfull.shtml>

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