

“For a disability-inclusive workforce”

Submission to the Council of Europe

(August 2018)

The Portuguese Ombudsman institution, in its capacity of national human rights institution fully in line with the Paris Principles and accredited with “A” status since 1999, hereby replies to the call for input received from the Council of Europe for contributing to the report “For a disability-inclusive workforce”. The current mandate holder is Maria Lúcia Amaral.

Preliminary remark:

With regard to the definition of disability, the Portuguese Ombudsman follows the social model of disability in accordance with the provisions of the UN Convention on the Rights of Persons with Disabilities.

Notwithstanding, the official bodies statistics tend to follow the medical model approach since it allows for clearer statements and more noticeable conclusions.

1. What are the latest official statistics with regard to the employment of persons with disabilities at the national level?

No updated official statistical data on the employment and unemployment of people with disabilities are available. The last figures demonstrate that the number of people with disabilities registered in 2016 in the state unemployment centres was 13.183.

In Portugal, the employment rate of people with disabilities follows the same trend as the average of the European Union countries, rising up to 44 years and falling again to 64.

In the age groups 25-34 years and 35-44 years, the employment rate of people with disabilities is slightly above the EU average: 62.6% in Portugal, compared to 58.0% in EU-28 in the 25-34 age group and 68.3% in Portugal, compared to 61.2% EU-28 in the 35-44 age group. These figures reflect the increase in internship or non-permanent employment opportunities available to persons with disabilities in Portugal.

However, the employment rate for the 16-24 age group is well below the EU average (12.0% versus 22.8% EU-28 average), most likely because of the schooling of children and young people with disabilities.

The *ratio* of workers in public administration has been increasing, reaching 2.30% in 2016. According to the most recent official data, published in June 2018 but referring to December 2017, there are 16.170 people with disabilities (10.618 women and 5.552 men) working in the Public Administration Sector.

Employment of disabled workers in the public sector grew steadily between 2011 and the end of 2017, with a positive overall change of more than 35%.

For the private sector, the figures for the year 2016, indicate that there are currently 10.789 workers with disabilities employed in companies with more than 10 workers, which represents less than 1% of the total workers of these companies.

2. Could you present measures required by law and voluntary measures addressed to potential employees as well as employers, so as to promote the participation of persons with disabilities in the labour market in your country (e.g. incentives, quotas, sheltered employment, information campaigns, training ...)?

The Portuguese Labour Code (approved by Law Lei n. 7/2009, of 12 February, as last amended by Law 14/2018, of 19 March), safeguards the principle of non-discrimination in the employment of people with disabilities, guaranteeing to any

worker or candidate for employment the right to not be directly or indirectly discriminated on the basis of disability (Article 24/1). In this context, Article 27 refers to the Measure of Positive Action, stressing that the application of measures of limited duration that aim to benefit a discriminated group, helping to correct situations of inequality, are not considered as discrimination.

Article 84 sets forth that adequate working conditions must be provided to all "low-working capacity" workers, in particular through appropriate training and development opportunities, together with reasonable accommodation which must be supported by the State.

Article 85 also provides that "*the State shall encourage and support the action of the employer in hiring a worker with a disability or a chronic illness and in his/her professional readjustment*".

With regard to public aid, the Employment and Support Program for the Qualification of Persons with Disabilities was executed with the financial and technical support of the Institute for Employment and Vocational Training (IEFP), through professional management rehabilitation centres and other non-profit entities. Several specific and general measures were adopted in order to support the qualification and occupational integration of people with disabilities. Specific measures, also known as occupational rehabilitation measures, include four main sectors: (1) support for integration, maintenance and reintegration in the labour market; (2) supported employment (where, for example, companies can receive subsidies to compensate for decreases in productivity of workers with disabilities compared with other workers); (3) the *Inclusive Employee Entity* brand, created in order to reward employers that adopt inclusive practices towards persons with disabilities; (4) Financing of support for the acquisition, adaptation or repair of support products and technical aids (for example, through accessibility improvements, such as widening doors, ramps and rods, installation of braille and audio guidance) so that employability is possible. General measures include initiatives to promote employment and vocational training which, although intended for all, contain special funding and other forms of positive discrimination to increase the skills and employability of people with disabilities.

3. What sanctions are foreseen for failure to comply with the measures required by law regarding the employment of persons with disabilities? Are these sanctions effectively applied?

The Labour Code contains special rules to protect the workers with disabilities. The general principle is that a worker with a disability is entitled to the same rights and is bound by the same duties as other workers in the access to employment, vocational training, promotion or careers and work conditions. However, their specific characteristics must be considered. The violation of these rights represents a very serious offence, according to Article 85 of the Labour Code.

Nevertheless, general sanctions for non-compliance with the rules on the protection of persons with disabilities are contained in a specific Act: the Law that prohibits and punishes discrimination in respect of disability and aggravated health risk (Law 46/2006 of 28 August). The aim of this Act is to prevent and prohibit direct or indirect discrimination on the grounds of disability in all its forms and to punish the practice of acts that disrespect any fundamental rights or refuse or condition the exercise of any economic, social, cultural or other rights, by any person, on account of disability. Under this law, practices against persons with disabilities are considered discriminatory, such as the adoption of a procedure, measure or criteria, directly by the employer or through instructions given to its workers or the employment agency, which subordinates to factors of a physical, sensorial or mental nature, the offer of employment, cessation of employment contract, or refusal to hire. Also, the broadcasting of advertisements for job vacancies which contain, directly or indirectly, any specification or preference based on factors of discrimination on grounds of disability are forbidden. Finally, the law also punishes the adoption, by the employer, of a practice or measure that discriminates a worker.

The burden of proof of discriminatory acts is shared. According to Article 6, those who claim that they were victims of discrimination on grounds of disability shall demonstrate that they were object of discriminatory acts. It is up to the alleged agent to prove that the differences in treatment was not based on any discriminatory factors.

The practice of any discriminatory act against a person with a disability confers the right to compensation for property and non-property damages (Article 7). It also represents an administrative offense punishable with fine (Article 9) and with a range of possible ancillary sanctions, such as loss of objects belonging to the agent, interdiction of activities, deprivation of the right to a subsidy or benefit granted by public entities, deprivation of the right to participate in fairs or markets, deprivation of the right to participate in public auctions or the granting of public works, closure of establishments, suspension of authorizations, licenses and permits, publicizing the conviction decision and public warning or censorship of the authors of the discriminatory practice (Article 10).

The National Institute for Rehabilitation is a public body that monitors law enforcement and publishes annually a report on the sanctions it applies.

In 2016, 284 discrimination-based complaints were filed. Of these, 199 were received by the Portuguese Ombudsman, 14 by the National Institute for Rehabilitation and 71 by other entities. The majority of cases were solved (92) and the other were closed on the grounds of lack of evidence of discrimination (58), withdrawal of complaint (2) and legal inadmissibility of the procedure (2).

4. What are the main sectors of employment of persons with disabilities in your country? What measures exist to improve employment in other sectors? Are any companies pro-active in this field and have they introduced voluntary quotas or other measures to promote the employment of persons with disabilities?

The main sectors of employment of persons with disabilities belong to the Public Administration. As stated in question 1, according to the most recent official data, referring to December 2017, there are 16.170 people with disabilities (10.618 women and 5.552 men) working in the Public Administration Sector.

The *ratio* of disabled workers in public administration has increased, being currently above 2%. This *ratio*, which is a consequence of the rise in the number of workers with disabilities, but also a reduction in the total number of workers, is still

much lower than the 5% reference standard established by the quota demanded by law.

Employment of disabled workers in the public sector grew steadily between 2011 and the end of 2017, with a positive overall change of more than 35%.

This increase has not been uniformly achieved in all public administration structures: central and local government structures registered a growth in the number of disabled workers in this period of analysis (+ 32.5% and +25.1%, respectively), in contrast to the regional administrations of the Azores and Madeira and Social Security funds, which witnessed a decrease in the number of workers with disabilities.

The Ministry of Education is the one with the highest concentration of jobs occupied by workers with disabilities, corresponding to 24.4% of the total of public administration as of December 31, 2017.

The universe of people with disabilities working in the private sector has also been increasing, but it is still residual. The most recent data, which date back to 2016 and exclude companies with less than 10 employees (where they may occupy a significant portion of employment), indicate 10.789 workers with disabilities, which represents less than 1% of the total workers of these companies.

The majority of workers with disabilities in the private sector are employed in manufacturing (22%), health and social support services (19%), commercial activities (14%) or finance and insurance (9%). Some of these workers concluded the secondary education (29%) or even the higher education (25%).

Data also reveal a gender segregation in these occupations, particularly in the manufacturing industries, which account for 27% of the male employees of the private sector, and only 17% of women. In health and social support activities in the private sector, 26% of women with disabilities are employed, whereas there are only 11% employed men.

In order to promote the professional integration of persons with disabilities within the Public Administration, Decree-Law 29/2001 of 3 February established a compulsory admission quota for Public Administration, which stipulates that: a) 5% of 10 or more job vacancies must be reserved for people with disabilities; b) at least one place must be reserved for persons with disabilities where there are 3-9 job

vacancies; c) in the case of a public call for tenders covering 1-2 places, the person with a disability should be given preference where the candidate(s) obtain the same classification. Although Article 28 of Law n. 38/2004 of 18 August sets forth the possibility of introducing a quota of 2% for workers with disabilities in the private sector, this measure was never regulated.

The hiring of people with disabilities is encouraged through public financial incentives and also by technical aids, as already mentioned in question one. In this context, the above mentioned “*Employment Entity Inclusive Brand*”, created in order to reward employers that adopt inclusive practices towards persons with disabilities, distinguished eleven entities in November 2017 for the first time. The list corresponds to companies that have adopted several measures to promote the employment of persons with disabilities:

- CAID – Cooperativa de Apoio à Integração de Deficiente
- El Corte Inglés
- Fundação ADFP – Assistência Desenvolvimento e Formação Profissional
- Horizonte – Cooperativa de Solidariedade Social e de Ensino
- MAPADI – Movimento de Apoio de Pais e Amigos ao Diminuído Intelectual
- Município de Ílhavo (Ílhavo Municipality)
- Município de Portel (Portel Municipality)
- Santa Casa da Misericórdia de Almada
- Santa Casa da Misericórdia do Porto
- Teatro Nacional de D. Maria II
- Universidade de Aveiro (Aveiro University)

5. Full inclusion of persons with disabilities in the workforce requires actions at multiple levels. What would be your main recommendations to this end? Please do not hesitate to send any additional information you would wish to bring to the attention of the rapporteur.

There are around 636 thousand people with some degree of disability in Portugal (636.059, according to Pordata, Census 2001). Most recent data suggest that only 27 thousand are employed (and 60% of these in the public sector and the essential is with short term contracts) and that there are just over 13.000 registered as unemployed in the IEFP. This means that the overwhelming majority of people with disabilities in Portugal do not even try to reach the labour market. Lack of accessibility (obstacles to locomotion, especially in large cities) and short duration of employment contracts are major obstacles.

Bearing in mind that the challenges faced by persons with disabilities in their day-to-day life are not only complex, but also diverse and multifactorial, full inclusion of persons with disabilities demand a comprehensive and integrated approach. In our view there are three main areas that require a particular attention in order to promote access to a stable and fulfilling inclusion of persons with disabilities in the workforce: education; social services and social support; labour and employment measures.

Regarding education it is important to acknowledge the most relevant steps taken in the last decades to promote inclusive education and inclusive schools. In fact, the integration of children with disabilities in regular schools is the standard under the Portuguese law, overcoming the risks of stigmatization and discrimination. Despite these positive measures, there are, however, several aspects that need to improve greatly on the matter of implementing a real inclusive education. Through direct observation and the contacts that the Portuguese Ombudsman has with civil society organizations, parents and directly with persons with disabilities – namely *via* a special department created in its internal structure and a telephone helpline dedicated exclusively to persons with disabilities rights’ – there is still an inadequacy in the quality and quantity of human and material resources for the promotion of an inclusive school. For this reason it is crucial to provide more training to professionals and to improve the access to support materials which are indispensable to aid children through their learning and integration process. There are also reports of difficulties in the application of the criteria that determine the planning and intervention with students with special educational needs.

Concerning social services and social support there are recent developments, namely a new model of autonomous living assistance and a new social benefit for

inclusion, which requires time to be correctly implemented and evaluated. Still, there are frequent complaints regarding the low amount of financial benefits to persons with disabilities as well as the excessive bureaucracy and slowness of the procedures that permit the access to technology and other instruments that are vital to the quality of living of persons with disabilities. Also in this area it is essential to promote the training of professionals in the public and private sectors in view to attain a human rights approach to the issues that concern persons with disabilities.

The third main area of intervention – labour and employment – is probably the one that requires a stronger effort as the statistical information shown above can confirm. The measures that were put in place, based on a quotas system in the public administration and benefits in the social security for private sector employers, don't seem to be enough to reach a full inclusion of the persons with disabilities in the workforce. There are still multiple barriers – social, cultural, legal and political – that hamper the full access to the labour market. This context demands that both economic and employment policies are deepened, either through more incentives to the employment of persons with disabilities; a revised quotas system; or both. In order to achieve full integration it is also important to improve the access to rehabilitation and other services that can contribute to a greater autonomy. Also important is the need to take strong steps to promote a cultural change, not only in the corporate world, as well as in society in general, that focuses on the capabilities of the persons with disabilities and the added value that they can bring to a business and to a community that is based on the respect for human rights.