



HUMAN RIGHTS AND DISABILITY

SPAIN REPORT 2010

**Drawn up by the CERMI Delegation for the UN Convention
With information from CERMI's Support Committee for the UN Convention
Approved by CERMI's Executive Committee on 26 May 2011**

www.cermi.es
www.convenciondiscapacidad.es

CONTENTS

- I. Introduction**
- II. Analysis of the Convention by article**
- III. Conclusions**
- IV. Statistical analysis of the queries received by CERMI 2010**
- V. Reports presented in 2010 by other institutions: Specialist Permanent Bureau of the National Disability Council, the Ombudsman and related autonomous bodies.**
- VI. Article on the discrimination suffered by a person with achondroplasia. *By Gloria Álvarez, Doctor of Law.***

I. INTRODUCTOIN: CERMI, AN INDEPENDENT CIVIL SOCIETY BODY TO MONITOR THE APPLICATION OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

One of the fundamental aims of CERMI, as the platform representing organized disability in Spain, with more than 6,000 associations and institutions of persons with disabilities and their families, is to defend the rights of this group of society who number over four million people in this country and with their families, amount to around twelve million citizens. In order to achieve our aims and as a consequence of our activity, we have identified situations which constitute a violation of the rights of persons with disabilities; these rights are firmly established in the Spanish Constitution (CE) and in the Convention on the Rights of Persons with Disabilities (hereinafter the Convention) itself.

As an independent body to monitor the application of the Convention in our country¹, we have prepared the third Report on Human Rights, Spain, for 2010, following the previous reports of 2008 and 2009. This report has been prepared with the intention of exposing the aforementioned violations in order to ensure that measures are taken to restore the rights of a sector of the population who have been experiencing a deficit in citizenship.

Different sources of information have been used, principally: queries and complaints received by CERMI itself as an independent monitoring body; actions undertaken in the course of the body's usual work; collaborators from both the association movement and from people affiliated with the various legal areas; and news published in the press which has instigated research on the part of CERMI.

An analysis was made by article in order to systematise the information for the compliance reports which the United Nations requires of the States, which includes information in relation to:

- Violations: as individual cases, not all those received but those which are the most striking or which serve as examples of violations or actions undertaken by CERMI.
- Positive action: cases of positive initiatives towards the enforcement of rights or particularly significant good practice.
- Court rulings by Spanish legal authorities: those which interpret or apply the Convention.
- Other information from institutions dedicated to ensuring that the rights of persons with disability are upheld.

¹ Formally appointed by agreement of the National Disability Council in September 2008, in compliance with article 33.2 of the Convention.

II. ANALYSIS OF THE CONVENTION BY ARTICLE

With regard to compliance with the principles and contents of the Convention covered in articles 1 to 4.

VIOLATIONS OF ARTICLES 1 AND 2

- **An incompatibility exists with the Convention in the area of discrimination on the grounds of disability.** As already highlighted in the previous Human Rights reports of 2008 and 2009, it is necessary to extend the scope of protection against discrimination on the grounds of disability contained in LIONDAU² to all situations which in fact involve a violation of the principle of equal opportunities on the grounds of disability. To that end the social concept of disability needs to be adapted, in accordance with the Convention, to all laws containing actions of protection against discrimination on the grounds of disability.

The Draft Bill on Normative Adaption to the International Convention on the Rights of Persons with Disabilities (*Proyecto de Ley de Adaptación Normativa a la Convención Internacional sobre los Derechos de las Personas con Discapacidad*), which was going through the Spanish Parliament at the time of completion of this report (May 2011), may, however, extend protection against discrimination beyond officially recognised situations (certificate of degree of disability), thanks to amendments suggested by CERMI and adopted by several Parliamentary Groups. Subject to checking the progress of the aforementioned Draft Bill, it must be said that the current situation, as CERMI have repeatedly highlighted, is certainly not compatible with the international treaty.

- **A revision of the criteria for assessing the degree of disability is still outstanding**, which should move towards the social mode, and be updated in accordance with the World Health Organisation's (WHO) International Classification of Functioning, Disability and Health.

The Convention and the WHO's International Classification of Functioning, Disability and Health, both contain a social concept of disability, resulting from the interaction of the person's own functional factors with the obstacles in the environment in which that person functions.

²Act 51/2003, of 2 December, on equal opportunities, non-discrimination and universal accessibility for persons with disabilities (*Ley 51/2003, de 2 de diciembre, de igualdad de oportunidades, no discriminación y accesibilidad universal de las personas con discapacidad.*)

This new perspective places the emphasis on social factors rather than the medical or rehabilitation model, a process which is being left behind and which links disability to a negative health situation.

The current scale in our country, from 1999, largely follows the medical model, and therefore adapts neither to the Convention nor to the WHO criteria and recommendations.

PROPOSALS FOR IMPROVEMENT

The approval of a new scale for disability is a Government commitment for this Parliamentary Term (2008-2012); therefore CERMI calls on the Ministry of Health, Social Politics and Equality to urgently put this new assessment device into place in accordance with the Convention.

- CERMI has received some queries requesting information on the possibility of **applying reasonable accommodation to people with disabilities without official recognition**, specifically, on the possibility of adapting the time of an oral test for entry into public employment, for a person with a degree of disability of 14% with oral communication difficulties. Order PRE/1822/2006, of 9 June, on adjusting additional time for selection processes regulates extending the time in accordance with the disability. The problem is that this Order requires a minimum degree of disability of 33% for this adjustment to be applied.

PROPOSAL FOR IMPROVEMENT

In line with the convention, these situations should be taken into consideration on an individual case basis, to ensure that there is no discrimination on the grounds that no official recognition of the degree of disability has been received, when the disability is permanent and measures need to be applied in order to achieve equal opportunities.

VIOLATION OF ARTICLE 2

- **Article 15 of Organic Act 2/2010, of 3 March, (*Ley Orgánica 2/2010, de 3 de marzo*), on sexual and reproductive health and the voluntary termination of pregnancy, allows eugenic abortion, this contravenes principles of the Convention and the concept of non-discrimination on the grounds of disability.**

Article 2, paragraph 3 of the Convention establishes the concept of discrimination as *“any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental liberties in the political, economic, social, cultural, civil or any other field.”*

If we analyse the legislative solution from Act 2/2010, of 3 March, with regard to the termination of pregnancy, we can clearly observe that a “distinction” is being made based on the risk or existence of a condition of disability in the foetus or prenatal life, which is protected to a lesser degree.

It is important to highlight at this point that the Convention covers discrimination not only towards the person with a disability, but also “on the grounds of disability”; this significantly widens its scope. Therefore, the existence or recognition of “personhood” is not necessary, it is sufficient to demonstrate that the cause of the discrimination is the condition or possibility of disability. In the case that concerns us, the principle of equality “on the grounds” of disability is being violated and therefore, in this regard the provision of the ruling on voluntary termination of pregnancy contravenes the Convention³.

VIOLATION OF ARTICLE 4

- Article 4.2 of the Convention, *inter. alia*, establishes that the State shall consult and allow the active participation of persons with disabilities in the preparation and application of the policies and regulations which affect their rights and interests.

The social fabric and movements that represent people with disabilities and their families, therefore, must be part of consultation bodies and processes. Accordingly, in 2010, CERMI called for the participation of the consultation bodies provided for by the Organic Act on the Rights and Duties of Members of the Armed Forces (*Ley Orgánica de Derechos y Deberes de los Miembros de las Fuerzas Armadas*) in applying the principle of participatory democracy recognised by current legislation in favour of associations of armed forces members who have become disabled.

To that end, the Law should cover the integration of associations of retired military personnel with disabilities in full meetings of the Staff Committee, a newly created participation body.

This would enhance the collaboration and participation mechanisms for people with disabilities and their families, and the associations which represent them, in the application of the principle of civil dialogue recognised under the Convention.

³ PALACIOS, Agustina *¿Por qué el aborto eugenésico basado en discapacidad es contrario a la Convención Internacional sobre los Derechos de las Personas con Discapacidad* (Why does eugenic abortion on the grounds of disability contravene the International Convention on the Rights of Persons with Disabilities?) a Report written for CERMI in 2010.

- **CORMIN (Navarre's Committee of People with Disabilities Representatives) calls for the right to participate in preparing the Integral Plan for Interurban Transport of Navarre.**

The social sector of disability of the Autonomous Community of Navarre (Autonomous Region of Spain) reported in 2010 that during the revision process of the integral plan for interurban transport the participation of the associative movement for the disabled in this region was not requested. Transport policies are a vital aspect in effectively achieving the right to an independent life and to be included in the community for persons with a disability.

- **CERMI request entry to the Advisory Committee for Orthoprosthesis Provision.**

CERMI presented a proposal to amend point 2 of the eighth section of the Order of 18 January of 1996, putting into effect Royal Decree 63/1995, regulating orthoprosthesis provision, which was amended by the Order of 12 December 1996 and by the Order of 30 March 2000, partially amending that of 19 January 1996, in which it requests the Government to ensure the participation on this advisory body of persons with disabilities through the organisations which represent them. There has been no response to this request and therefore the principle of civil dialogue, participation and consultation is being infringed.

ARTICLE 5 – Equality and non-discrimination

- The Government is failing to comply with the sixth additional Provision of Act 49/2007 of 26 December which sets the rules on infractions and penalties in the area of equal opportunities, non-discrimination and universal accessibility for people with disabilities. This additional provision establishes that at least in the four years after the Act came into effect, an annual report should be submitted to the *Cortes* (the National Parliament) on the actions carried out every year to implement the Act, the financial cost of such actions and the schedule of future actions. In addition, the provision requires a report on any penalties imposed and their financial yield.

CERMI has condemned the inefficiency of the rules on penalties due to the inactivity of the government agencies, and has presented a complaint to the Ombudsman; the Annual Report submitted by this Organisation to Parliament contains a reference to this.

- The length of legal proceedings can occasionally cause irreparable damage. According to data from the *Consejo General del Poder Judicial* (CGPJ) (General Council of the Judicial Branch) ⁴, the average duration of contentious-administrative legal proceedings is 15 months for first instance, 10 months for second instance and up to 18.8 months in the case of an Appeal to the Supreme Court. When it is a question of the violation of fundamental rights, this delay may cause irreparable damage. This is what is happening in relation to the right of children with disabilities to inclusive education, which we shall examine in more detail in this Report in the section on Article 24 of the Convention. When parents find that they are forced to take the legal route to keep their children within the inclusive education system, the development of these young people may be damaged beyond repair.

PROPOSALS FOR IMPROVEMENT

- Incorporate indicators to monitor the efficacy of protection systems, follow-up of matters both in the area of administrative penalties and of the indicators monitoring the legal area.
- With regard to the legal protection of fundamental rights, principally in the contentious-administrative and civil area, proceedings need to be expedited or immediate protection measures established (for example, similar to injunction proceedings).
- Ensure regional development of the system of infractions and penalties under the LIONDAU and effectively put it into effect.
- Promote the arbitration system provided for by the LIONDAU.
- Extend free legal aid to all situations where protection is requested of a fundamental right which has been infringed on the grounds of disability, without any financial constraints to its application.

ARTICLE 6 – Women with disabilities

CERMI's Gender Commissioner and President of the Women's Committee of the European Disability Forum, Ana Peláez, presented a report to the Disability Intergroup of the European Parliament on the great vulnerability of women and girls with disabilities. The Report, whose contents are reproduced in this section, also contains proposals to promote the protection of the rights of women and girls with disabilities on an equal basis with others.

The Report identified the following obstacles:

⁴ Source CGPJ – Key Contentious Administrative Jurisdiction indicators. Data from 2008/2009.

- Greater difficulty in expressing abuse due to communication barriers
- Difficulty in accessing information and advice points, mainly due to physical, technological, cognitive or communication barriers.
- The conflict between the traditional roles assigned to women and the denial of these in the case of women with disabilities.
- Greater dependence on care and assistance from others.
- Being afraid to report abuse in case access and provision of care is lost.
- A shortage of credibility when reporting or complaining about these sorts of incidents.
- They often live in environments where there is violence (broken homes, institutions, homes and hospitals).

PROPOSALS FOR IMPROVEMENT

ACTIONS DIRECTED AT THE COMMUNITY ENVIRONMENT

- The inclusion in official primary, secondary and university education study plans of adapted pedagogic material which promotes student awareness of gender equality, disability and diversity, non-stereotypical gender roles, mutual respect, non-violent resolution of conflict in personal relationships, concepts of honour and individual self-determination.
- The development of a system for the early detection of situations of violence involving girls and women with disabilities who have been institutionalised or who are resident in closed and segregated environments.
- Preventing the institutionalisation of girls and women with disabilities in segregated environments, where there is an increased risk of situations of abuse and violence, and offering alternative services based in the community.
- The prevention of violence and access to the services provided for that purpose for girls and women with disabilities. The extent needs to be examined to which the States are ensuring that girls and women with disabilities are included in and can access prevention programmes and information campaigns on solutions.
- Accessibility in terms of town planning, architecture, learning and communication of police stations, police courts and emergency services.
- Accessibility in terms of town planning, architecture, learning and communication of all victim support services available (emergency shelters, reception centres, Internet sites, telephone services, preventive electronic devices, etc.).
- The inclusion of disability in all campaign materials and training courses for gender-based violence professionals. The materials should also be accessible.

- Giving priority to women with disabilities who have been the victims of violence for social housing, home improvement grants, home help and access to public gender-based violence services.
- The development of adequate and suitable empowerment/rehabilitation schemes for girls and women with disabilities and serious communication difficulties in order to develop their communication skills.
- Taking into account that it is the fact that the victim has a disability which has provoked crimes of violence and abuse, and imposing more severe sentences for the perpetrators of violence and abuse against girls and women with disabilities.

ACTIONS DIRECTED AT THE DIRECT CARE OF GIRLS AND WOMEN WITH DISABILITIES

- Training courses for the prevention of gender-based violence against girls and women with disabilities.
- The preparation of materials with adequate accessible information on support services and legal help available to prevent and combat violence in easy-to-understand language, including the use of alternative and augmentative means and forms of communication.
- Putting into place awareness-raising, information and training initiatives for the families of girls and women with disabilities who are most at risk of forced sterilization and for professionals – especially medical and legal – so that girls and women with disabilities have a voice in investigative processes. These initiatives should be made in cooperation with the organisations which represent people with disabilities.

ACTIONS IN THE AREA OF LEGISLATION

- Revision of the legislation promoted by the European Union and its Member States to guarantee no discrimination of any type against girls and women with disabilities in accordance with the forthcoming Convention on Preventing and Combating Violence against Women and Domestic Violence (CADHVIO) and the International Convention on the Rights of Persons with Disabilities (CRPD).
- Revision of the legal framework that allows forced sterilization or coercive abortion, tackling the issues around “informed consent” and the “legal capacity” of people with disabilities, in order to achieve the necessary amendment and comply with the spirit and obligations of the Convention, which requires the introduction of reform which considers that respect for the home and family, the dignity and the integrity of people with disabilities are fundamental rights, which cannot be infringed. So that the deliberate practices outlined below shall be made criminal if they are undertaken for reasons other than medical necessity:

- a. Performing an abortion without the prior consent of the woman, on the pretext of safeguarding the welfare of the woman or the rights of the unborn child;
- b. Surgical intervention, if undertaken for reasons other than medical necessity, without the person's consent, or without the person understanding the specific purpose of the intervention, the direct or indirect aim of which is to terminate the ability of the person to reproduce, on the pretext of concern for the well-being of that person.⁵

ACTIONS WITH REGARD TO RESEARCH

- Effectively include disability as an indicator and in official reports to raise awareness of the violence suffered by women with disabilities. Systematic collection of data disaggregated by sex and other factors such as age, ethnicity and disability, detailing the prevalence of all forms of violence against women and the effectiveness of any measures implemented to prevent and redress violence against women⁶.

⁵ The right of women with disabilities to reproductive freedom is being denied in many ways – forced abortions, being pressurized into undergoing tubal ligation or hysterectomy, illegal sterilisation, the systematic denial of appropriate reproductive health care and early detection programmes, restrictions in the selection of contraceptives, a focus on controlled menstruation, denial of access to assisted reproduction technologies, a lack of professionalism in the management of their pregnancy and birth, and denial of the right to be a mother simply on the grounds of their disability.

There is evidence that forced sterilisation continues to be practised in the case of many people with disabilities in several European countries, especially in the case of girls and women with intellectual or psychosocial disabilities, without their consent or their understanding the specific purpose of the surgical intervention, and under the pretext of safeguarding the wellbeing of the person with a disability.

For many girls and women with a disability this experience, which they have been forced to undergo against their will, coerced and under duress, is a violation of their right to access the appropriate services. Their basic human rights, including the right to physical integrity and to retain control over their reproductive health, are being violated and denied, sometimes without their being aware of this fact.

The consent of the parents or the person representing the girl or woman with a disability, if this is required as the person is a minor or has been declared legally incapacitated, should in every case be based on respect for the human rights and the will of the girl or woman with a disability. Furthermore, it is the responsibility of the medical staff involved to ensure that the girl or woman with a disability is appropriately informed that the operation or surgical intervention will result in sterilisation, and of the consequences that this will have on her future life.

⁶ As indicated by the United Nations Report of the Secretary General (2006): *In depth study on all forms of violence against women*. Report of the General Secretary. A/61/122/Add.1.:

“284. The international legal and policy framework establishes standards for action by States to meet their legal obligations and policy commitments to address violence against women. These fall into the following categories:

- Performing a specific research study in order to detect gender-based violence in this sector of the population. Awareness is needed that there may be many women with disabilities who live in closed and segregated environments. Women with disabilities who do not know that they are the victims of violence, whose lives depend on their aggressor, and who have no access to information, and who cannot reach a police station independently to report the violence.
- The preparation of studies which make known the reality of the sterilization of persons with disabilities in Europe, with a gender, age and type of disability perspective, offering exact statistics on forced and therapeutic sterilisation.

ARTICLE 8 – Awareness Raising

VIOLATIONS 8

- **The media, whether public or private, have the legal and moral obligation to remove any content which is discriminatory and undermines the dignity of a person on the grounds of their disability.**

- Telecinco, one of Spain's leading national television channels, made a broadcast making fun of people with cleft palates - a disability which affects the structures of the mouth - when a contestant was imitated in the programme "*El debate de Gran Hermano*".

CERMI contacted the management of Telecinco to request that they implement measures to prevent a repeat of comments and actions on air which are harmful to the image of people with disabilities and their families. The television channel apologised and promised not to allow this type of behaviour in the future.

ARTICLE 9 - Accessibility

VIOLATIONS 9

- **The lack of a firm commitment by the Government to remove accessibility problems in public buildings.** Accessibility is still one of the most discriminatory obstacles encountered by people with disabilities.

Systematic collection of data disaggregated by sex and other factors such as age, ethnicity and disability detailing the prevalence of all forms of violence against women; the causes and consequences of violence against women; and the effectiveness of any measures implemented to prevent and redress violence against women."

- CERMI collected the *Cruz de la Orden Civil de Sanidad*, (The Spanish Government's highest award in the field of healthcare) awarded to them by the Government in the "Ernest Lluch" Assembly Room of the Ministry for Health, Social Policy and Equality. Many of their members had problems attending the event due to the poor conditions of accessibility, such as the lack of reserved seating for wheelchair users, the inaccessibility of the podium for people with reduced mobility and there being no magnetic loop facilities. It is difficult to understand why the Ministry responsible for public policies on disability would not remove all barriers in their premises.
- Other cases cited were the headquarters of the *Delegación del Gobierno para el Plan Nacional sobre Drogas* (Government Delegation for the National Plan on Drugs), the central offices of INGESA (Health Management National Institute), and the headquarters of INC (National Institute of Consumption), all located in Madrid. The lack of accessibility to the central offices of the Government of Spain's Ministry of Territorial Policy, the administrative building of Castile and Leon Tourist Office on the calle Alcalá in Madrid and the Pacífico Metro station in Madrid was also reported.

As in previous years, CERMI has reported the failure to comply with accessibility standards of numerous open public spaces, including:

- The Community of Madrid's Council for the Promotion of Accessibility and Removal of Barriers were sent numerous complaints regarding non-compliance on the part of buildings, mainly new constructions, which include: the headquarters of the *Mutua Fraternidad Muprespa*; the commercial building *SIMPLY* on the calle Alcalá, the *Block House* restaurant on the Paseo de Recoletos, the *Decathlon* store on the Paseo de la Castellana, the shops *Vans and Bershka* on the calle Montera, *Massimo Dutti* on the calle Goya, *Fotocasión* on the calle Ribera de Curtidores, *Dior* on the calle Ortega y Gasset and *Loewe* on the Calle Serrano, the branch of *ING Direct* on Ronda de Valencia, a pharmacy office on the calle Alcalá and the food establishment *Harina* on the Plaza de la Independencia.
- The lack of accessibility to the following hotels was also reported: Hotel Parador *La Muralla* of the autonomous city of Ceuta and the Parador Nacional *Reyes Católicos* in Santiago de Compostela.
- Openbank's website was also reported by a blind client of this bank, who could not make a transfer due to problems accessing the form shown on a screen; the labels indicating the fields to be completed are not correctly placed, making it impossible to know what needs to be written in each field.

After several complaints to this bank the matter was reported to the Specialist Permanent Bureau (OPE) of the National Disability Council for their failure to comply with the obligations established under Act 56/2007, of 28 December, on Measures to Promote the Information Society.

- **CERMI reminds the Traffic Department of their obligation to ensure accessibility to the process for obtaining a driving licence.**

Since the points-based driving licence came into effect, the Traffic Department of the Ministry of the Interior has been progressively removing, throughout Spain the means of accessing information in sign language, to enable deaf people who use it to access and understand the content of tests.

In response to the complaints made by the associations for the deaf, a spokesperson from the Traffic Department made several declarations on national television in relation to the barriers to communication encountered by deaf people who use sign language to sit their theory test in order to obtain a driving licence. Amongst other statements, the Traffic Department spokesperson declared on public television that if deaf people have difficulties passing their driving theory test they should “be taught how to read”.

CERMI informed the Traffic Department of the Ministry for the Interior that as a Government agency they are obliged by law to adopt the necessary measures to ensure accessibility to the process of gaining a driving licence for persons with disabilities and condemned the statements made in the media.

Government agencies, including those responsible for matters such as road and traffic safety, are obliged both under the Convention and Acts 51/2003 and 27/2007 to ensure that administrative procedures, including obtaining a driving licence, are accessible. In addition the Spanish legal system legally recognises Spanish sign language and all public authorities are bound by this.

To impede the access of people with disabilities to a basic right such as a driving licence due to a failure to ensure accessibility and the use of a legally acknowledged language, to all intents and purposes constitutes a violation of the rights of people with disabilities.

POSITIVE ACTION

The Traffic Department has promised to adapt the traffic manual to Spanish Sign Language, along with a specific glossary in order to help deaf people to obtain a driving licence, in collaboration with the State Confederation for the Deaf (CNSE).

The creation of a website funded by the Government to provide training materials in Sign Language has been agreed. Thus deaf people will be able to download the Traffic Manual free and the technical glossary adapted to their mother tongue.

In addition deaf people will be provided with the services of a sign language interpreter during the explanation prior to the theory test and will be able to request a time adjustment for taking the test.

- **Many companies, who do not have accessibility measures in place for customers with disabilities, do not allow their employees to help people who may need help making purchases in their shops.**

Although the obligation to make reasonable accommodations is covered both under the Convention and the LIONDAU, private sector companies are not aware of these obligations and do not have customer service protocols for people with disabilities, which gives rise to situations which violate their consumer rights.

- One of these complaints was made in IKEA, the large commercial furniture store, in one of their Madrid centres, when, in strict compliance with the company's outdated regulations, a customer using a wheelchair received no help from their employees despite their requesting assistance to take a set of shelves which they had purchased to their vehicle parked in the shop's car park. The Manager and the Human Resources Director justified this by explaining that it was the company's policy that employees may not leave the shop, even if requested to do so by a customer with a disability to help them carry purchases that they cannot transfer themselves, in this case the customer was a manual wheelchair user.

- CERMI have also received other complaints in this area against large supermarkets such as Mercadona, where allegedly it is the company's policy to refuse to allow employees to assist customers with disabilities, in this case two blind people, to complete their shopping.

- CERMI and the Specialist Permanent Bureau of the National Disability Council received a complaint about Canal Digital Plus, for obstructing the rights of a deaf customer. The lady asked for the technical services of the company to communicate with her by text message to her mobile phone or by e-mail. The private television service did not grant this request, creating obstacles and inconvenience for this customer.

The laws on disability, specifically the LIONDAU Act and the Convention establish the right to accessibility and define the concept of “Reasonable Accommodation” as “the measures of accommodating the physical, social and attitudinal environment to the specific needs of persons with disabilities which, in effective and practical form and without supposing a disproportionate burden, facilitate the accessibility or participation of a person with a disability in equal conditions as the rest of the citizenry”.

If these measures are not adopted, people with disabilities will find themselves clearly at a disadvantage to other potential customers unless support is available to enable them to be customers on an equal basis to others.

PROPOSAL FOR IMPROVEMENT

In light of these regrettable events, regulation is called for on conditions of basic accessibility and non-discrimination against people with disability for access to and use of the goods and services which are available to the public, which should have been approved in 2005 in accordance with the final sixth Provision of Act 51/2003.

ARTICLE 12 – Equal recognition before the Law

Occasionally equal recognition before the Law of persons with disabilities is infringed because of the mistaken, yet regrettably entrenched, belief that they do not have the full capacity to act, because it falls to a person representing them to exercise their rights.

As already mentioned in previous reports, protection of legal capacity and the capacity to act of people with disabilities needs to be reformed; this is regulated along with other standards by the Spanish Civil Code. The reform should guarantee the rights of persons with disabilities and offer legal security to prevent discriminatory situations such as those outlined below, in this point and in the section devoted to Article 13 of the Convention on access to justice.

- A person with a degree of disability of 34 percent, with full legal capacity, attempting to buy a motor vehicle, encountered all sorts of difficulties from the sales person making the sale, at first he was asked not only for a certificate of his degree of disability, but also his complete medical report issued by the Social Administration Unit. The customer sent the certificate but refused to send the medical report and was not allowed to take out payment protection insurance included in the finance proposal. Finally, having vigorously complained about the request for information on his state of health, this being protected information, he was asked for “proof

that he had not been legally incapacitated” in order to complete the purchase of the vehicle.

Spain has yet to complete the appropriate regulatory changes to her domestic Law in order to make the mandates of Article 12 of the Convention effective, and repeal the current system of substitution of capacity by representatives in favour of a system based on providing support in decision making. The Government has not kept their political and legal commitments to reform the entire civil system with regard to legal capacity and therefore in this aspect continues to contravene the Convention.

ARTICLE 13 – Access to justice

- In a police station, a staff member prevented a person from reporting a robbery of which she was a victim due to her disability; she was only allowed to make the report when accompanied by another person without a disability.

The victim, who was attacked in the street by a criminal armed with a knife, entered a police station to report what happened, but the staff member who dealt with her said that she should be accompanied by somebody without a disability.

The victim of this crime has a psychosocial disability (mental health disorder); she is able to fully exercise her civil rights because she has not undergone any measure to restrict her capacity. Because the staff member had refused to allow her to file a complaint, she had to walk more than an hour back to her place of work as she had no money for public transport because her purse had been stolen. At her place of work she asked a colleague to accompany her and eventually she was allowed to report the crime. The staff member specifically wrote in his report on her complaint “*she should appear on these premises accompanied by (...) as the mental faculties of the person making the complaint are limited*”.

This incident constitutes a breach of the right of access to justice which was reported as an administrative offence to the Permanent Bureau of the National Disability Council and the Ombudsman, and the Ministry for the Interior was also informed. When required to give information on the events, the police station alleged that they were only trying to protect the victim and that as she was very distressed when she arrived at the station they considered it necessary for another person to be present to formalise the complaint.

All these allegations are discriminatory: firstly, because the right to file a complaint may not be amended, even by legal ruling; secondly because the victim of a violent crime would usually be upset and distressed regardless of whether or not they had a disability, and it is not usual practice to require a third person to file a complaint.

It would appear more logical that if the intention was to protect the victim, efforts should have been made to place everything at her disposal to take her statement and file her complaint as soon as possible, bearing in mind that the person who accompanied her could not contribute at all as they had not witnessed the event.

The legal protection of fundamental rights includes the right to access to justice and effective legal protection (articles 5.2. and 13 CRPD and article .24 EC), and no person should be deprived of the right to exercise these rights, which must be guaranteed on an equal basis with others.

PROPOSAL FOR IMPROVEMENT

In compliance with the Convention and to ensure the correct application and interpretation of its principles, justice administration officials, including police staff, must receive training on and be made aware of the rights of people with disabilities.

- **Specific legal recognition of the right of persons with disabilities to access to justice in general.** The lack of accessibility measures and availability of means in the legal area could obstruct and render ineffective the right to effective legal protection enshrined under the Spanish Constitution⁷. The right of access to justice should include the principle of accessibility, support, including alternative and augmentative communication means and formats or other means of communication used by persons with disabilities.

- CERMI reported to the Ombudsman the discrimination of Organic Act 5/1995, of 22 May, of the Jury Court (*Ley Orgánica 5/1995, de 22 de mayo, del Tribunal del Jurado*) which established **not presenting any physical, mental or sensory impairment as a requirement to undertake jury service** (article 8.5). This is a law which if implemented, directly violates the right to participation of people with disabilities.

On the basis of the protected right to non-discrimination on the grounds of disability, under both the Spanish Constitution and the Convention, and in Act 51/2003, LIONDAU, article 8.5 of this Organic Act contravenes the right of people with disabilities to participate in the administration of justice.

Therefore, each specific case should be assessed in terms of aptitude once the appropriate accessibility and support means have been guaranteed to ensure that Jury service can be performed on an equal basis with others.

⁷ Report on Human Rights and Disability CERMI 2009.

This complaint brought about reform of the Law on Jury Courts in amending this aspect, a legislative initiative which on the date of completing this report was going through the Spanish Parliament.

PROPOSALS FOR IMPROVEMENT

It is important that in compliance with the Convention, the right of persons with disabilities to access to justice is recognised under the terms set in articles 2 and 9 of the Convention. This means that express recognition is made of the right to use sign language, means of support for oral communication, Braille, augmentative and alternative communication modes, means and formats, or any other support apparatus necessary to ensure equality on an equal basis with others.

ARTICLE 14 – Liberty and security of the person

VIOLATIONS 14

- **“A..., 79 years of age, living in a hospital”** this was a headline in the Spanish press (published in *elmundo.es* on 28 April 2010) which brought to the attention of the public the plight of a person with spina bifida who had been living in a hospital from the age of three until the day he died. This situation seriously violated all his fundamental rights and all the government agencies had remained entirely passive allowing him to be registered as resident in room 415 of the Provincial Hospital of Pontevedra, which apparently he had only left once to look at the sea.

CERMI, within their scope of activity, receive complaints and reports from private individuals who have witnessed situations where the rights of persons with disabilities are being violated.

In this regard, all too often situations are revealed where hospitals are being used as usual places of “residence”, or long-stay accommodation for persons with disability in general and especially when they have mental health problems.

The restrictive nature of these institutions may give rise to a serious violation of the fundamental rights of people who have been hospitalized, when their admission has not been voluntary or justified by the need for a temporary surgical intervention which can only be performed in this sort of health centre. It can only be deduced from these situations that, as there are no other resources available to meet the needs of this group of people, their stay is being lengthened and extended indefinitely, hindering their personal development and breaching their dignity and their basic rights.

CERMI has requested the intervention of the Ombudsman to look at the situation in psychiatric hospitals, and for their support in regulating the fundamental rights

of people who have been admitted to these institutions, both in the public and private sectors.

RULING 14

- **The Constitutional Court declares as unconstitutional the regulation on involuntary admissions of articles 211 of the Civil Code and 763 of the Civil Procedure Act (*Ley de Enjuiciamiento Civil*).**

- **The Constitutional Court Ruling 131/2010, of 2 December 2010** determined as unconstitutional the first paragraph of article 211 of the Civil Code, as its object is a matter included within the scope of Organic Law, in particular the measure on the legal authorisation to detain persons who present with “mental disorders” (sic), as this affects the guarantee of individual liberty of article 17.1 of the Spanish Constitution.

The Court also states that as the decision to detain constitutes the deprivation of liberty, it may only be agreed judicially, as stipulated in article 211 of the Civil Code. But as this issue affects a fundamental right, it must be regulated by organic law in accordance with article 81.1 of the Spanish Constitution, a conclusion which has already been established by the same Court’s ruling, number 129/1999, which in its second consideration stated the requirement of an organic act for the rule allowing the detention of persons who “are suffering from mental disorders” (sic) (article. 211.1).

- **The Constitutional Court Ruling 132/2010, of 2 December 2010** determined as unconstitutional the subparagraphs of article 763, the first and second paragraphs of Act 1/2000 of 7 January, on Civil Procedure, which regulates the decision for involuntary detention on the basis of “mental disorder” (sic), a measure which affects the fundamental right to liberty of a person in article 17.1 of the Spanish Constitution, and therefore should be regulated by organic law in accordance with precept 81 of the Spanish Constitution.

The subject of article 763 is included under ordinary law (*ley ordinaria*), however as established in the second legal foundation of the STC 129/199, this subject is restricted to organic law because the guarantee of liberty of person established in article 17.1 of the Spanish Constitution, affects people who are the object of a legal decision to detain them. In addition, the Court adds, the regular detention (...) of an insane person should be included within the cases and forms mentioned in article 17.1 of the Spanish Constitution, which is referred to in article 5.1 of the European Convention on Human Rights (STC 104/1990, legal foundation 2).

Therefore, the Constitutional Court declares that paragraphs 1 and 2 of article 763 of the Civil Procedure Act are unconstitutional – as the subject that this precept regulates means it can only be included under organic law and not ordinary law –

in the parts which affect the deprivation of liberty and therefore the fundamental development guaranteed under article 17.1 of the Spanish Constitution.

PROPOSAL FOR IMPROVEMENT

The rulings of the Constitutional Court make reform of these areas necessary. CERMI, already having stated that forced detainment in the way that it has been regulated contravenes the human rights of persons with disabilities, call for this regulation to come under organic law and also be substantially amended to make it compatible with the Convention.

Forced detainment cannot be a healthcare measure for persons with disabilities, as is the case at the moment. The situations need to be identified in which people are currently being “cared for” by the use of forced detainment, whether as a social emergency, as therapy or in the interest of the public, and regulations should be passed to ensure the rights of persons with disabilities and their inclusion in the community on an equal basis with others.

ARTICLE 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment

Article 16 – Freedom from exploitation, violence and abuse

Articles 15 and 16 are to offer persons with disabilities protection against any type of violence, exploitation or abuse, both inside and outside the home.

VIOLATIONS 15 AND 16

- **CERMI calls for the inclusion of information and specific indicators on women with disabilities in the National Observatory on Violence Against Women.**

After studying the Draft of the third Report of the National Observatory on Violence Against Women it was observed that women with disabilities receive no specific mention, nor are there any statistics or data in relation to them.

As stated in the section on Article 6, women with disabilities are particularly likely to be the victims of violence as this group contains several risk factors.

It is essential that policies against violence against women include and raise awareness about disability in order to adopt effective measures to combat it.

For this reason, CERMI has made specific proposals so that future reports cover women with disabilities.

The first requirement in order to develop effective policies is to identify the statistical data on disability as women with disabilities, just as immigrant women, are particularly vulnerable groups. Indicators are required in order to do this, such as the number of deaths, complaints, legal proceedings, women under current legal protection, users of the mobile telephone assistance service, subsidized contracts and substitution contracts, among others.

It is suggested that a research study be undertaken to include indicators to detect the gender-based violence suffered by many women with disabilities who live in closed and segregated environments. Often these are women with unknown disabilities who are the victims of violence from an aggressor on whom their life depends; they have no access to information as they cannot get to a police station independently to file a complaint as in the case outlined below.

CERMI also suggests that the accessibility to specific services offered should be studied (shelters, legal services, care at the police station, etc.) for women with disabilities.

POSITIVE ACTION

The National Observatory on Violence against Women agreed in 2010 to create a work group specifically on women with disabilities which CERMI would coordinate.

- The Confederation of Organisations of people with intellectual disability (FEAPS Madrid), highlighted the need for close collaboration between administrations and the associative movement of intellectual disability in order to avoid a repeat of situations such as that of the young woman who was freed in July 2010 in la Cañada Real Galiana after having been confined in a house for several years.

The young woman was freed in an operation by the Guardia Civil against a group of thieves, when they entered a dwelling in which they found her locked in a room.

As stated in the section on Article 6, women with disabilities are frequently exposed to situations of abuse and violence which should be prevented by the implementation of appropriate policies.

PROPOSAL FOR IMPROVEMENT

- **In June of 2010 CERMI asked the Parliamentary Groups of the Senate to set up a commission of enquiry to investigate the situation of persons with disabilities and old people placed in social institutions.**

In CERMI's opinion, there are several indications of the extreme fragility of these persons in terms of how they are able to exercise their most basic human rights, and therefore it is necessary to investigate their real situation, and propose measures to improve the legal protection framework.

In line with the Convention, in force in Spain, institutionalisation is only acceptable if it is voluntary, but it does not in any way implicate a reduction in access to all of the rights of any human being.

From the exact, quantitative and qualitative knowledge which this commission of enquiry may provide about the real situation of these people who have been placed in institutions, including psychiatric prison hospitals, reforms to the law can be contemplated to fully guarantee these people their rights.

For CERMI, the resources and devices aimed at people who need support to achieve personal autonomy must always be devised bearing in mind their right to lead an independent life and to be included in the community, in accordance with Article 19.

ARTICLE 17 – Protecting the integrity of the person (physical and mental)

Measures which compromise the physical and mental integrity of persons with disabilities are never justified and this right must be protected on an equal basis with others of all ages.

- CERMI has presented a proposal for the Public Health Bill in order to achieve regulation which guarantees informed consent in the area of health. To this end, suitable care and support measures for decision making have to be recognised and established for people in need of them in order to appropriately form and express their will, and their right to make free decisions with regard to their health should be respected on an equal basis with others.
- Forced sterilisation constitutes an assault on the physical integrity of persons with disabilities. The number of forced sterilisations performed every year is unknown - these essentially affect women - and they are covered legally under the Penal Code. CERMI vigorously stress the need to urgently amend this legislation to put and end to this flagrant violation of human rights.

DENUNCIATION

CERMI call for amendment of the Penal Code⁸ which removes the decriminalisation of sterilisation without the express consent of the interested party when this is a person with a disability⁹.

Article 19 – Living independently and living in the community.

VIOLATIONS 19

- 9% of the complaints received by CERMI concern problems of accessibility to buildings. This situation is a significant obstacle to living independently and in the community for people with disabilities and is also the source of much conflict in property owners' associations:
 - The children of a person with a disability approached CERMI for help because they had been demonised and attacked by neighbours who were against placing a lifting platform on the stairs of the building in which their mother lived, and which they considered "*not necessary to put up a platform considering the time she's got left*".
 - Removing a spring in the entrance door of the building in which two people with disabilities live, with significantly restricted mobility, set off a spiral of attacks and insults by some neighbours who failed to understand the accessibility needs of these persons to be able to enter and leave their home. These incidents were reported to the police as some may constitute a criminal offence.
- The System for Autonomy and Care for Dependency (SAAD) in situations of dependency regulated by Act 39/2006, of 14 December, lacks a true perspective on human rights.

SAAD benefits are awarded unequally in the autonomous regions leading to several problems. All of this is evidence of the System's lack of human rights' perspective; it should become a tool to ensure that persons with intensive support needs are included in the community. Previous versions

⁸ Spanish Penal Code, article 156: "... the sterilisation of an incapacitated person who has serious mental impairment shall not be punishable when, the guiding principle being the greater interest of the incapacitated person, it has been authorised by a Judge either at the incapacitation proceedings or in a voluntary jurisdiction report, processed thereafter, on the request of the legal representative of the incapacitated person, having heard the opinion of two specialists, the Public Prosecutor and after examination of the incapacitated person"»

⁹ Human Rights and Disability Report 2008, CERMI Manifesto International Women's Day 8 March 2009.

of this report have already complained that the participation of people (with disabilities) in drawing up the Individual Care Plan (PIA) is not decisive and may not respect their right to self determination; provision of personal care is unjustifiably restrictive and there is a scandalous shortage; the plan to promote the autonomy of minors between nought to three years of age has still not been formed and there are obvious inequalities in the implementation of the system through the autonomous regions.

- In the Valencia Community, two mothers complained about the system's lack of flexibility affecting its efficacy. To be specific, the incompatibility of services is a perverse situation which may make the situation worse for people in need of support, in this case the mothers as carers had to give up work to care for their children who are now 21 years of age. Although they attend a day centre, the women cannot combine their professional and personal lives as their children need as much care when they are not at the day centre and, as it is not possible to combine the day centre with benefits in the home, this would lead to the perverse situation of removing the children from the day centre that they attend, and asking for financial assistance in the home to take care of their children all day. In this way they would be able to contribute towards a pension in the future, but to the detriment of their children, as they receive rehabilitation and training services in the day centre which are necessary for their personal development¹⁰.

- The grandfather of a child with autistic spectrum disorder went on hunger strike in his despair having received no help whatsoever to care for his grandchild. The child needed support to develop his personal autonomy and to release him from extreme dependence on his parents. Because of the shortage of this type of resource it is the family who provides the only help for these people.

The official data for the implementation of SAAD (System for Autonomy and Care for Dependency)¹¹ reflect that care benefits have been developed widely but there has been little development of benefits to promote personal autonomy and social inclusion. According to information from the Ministry of Health, Social Politics and

¹⁰ ORDER of 5 December 2007, of the Regional Ministry for Social Welfare, regulating the access conditions for financial help from the scheme for the care of people and their families in the framework of the system for the autonomy and care of dependent persons of the Valencian Community. Compatibilities Regime of services and benefits.

Article 4. Compatibilities Regime.

h) Financial benefits for care in the home and support for non-professional carers shall be incompatible with all services and benefits, apart from Teleservices and home help services, Day and Night Centre and Residential Care, during the holidays of the carer with the financial benefit linked to receiving a service."

¹¹ Presented on the date that this report was completed, April 2011.

Equality¹² out of the number of beneficiaries receiving help totalling 800,009 people, only 12,351 receive help aimed at personal autonomy; out of those 747 have a personal assistant.

Minors up to the age of three are not being cared for because the care plan for this specific age group has not been developed and the age limits for access to certain benefits are still applicable, children under sixteen in particular may not opt for a personal assistant in Catalonia because they are expressly excluded from the regional regulation¹³.

- The right to live in the community requires that all services for the general population are available to persons with disabilities on an equal basis with others and they should not be forced to adapt to specific living arrangements.

This means that public services should be governed amongst others by the principles of inclusion, accessibility and participation. However there are many situations where this human rights focus is still lacking and persons with disabilities are being cut off from accessing community services.

- After a complaint received from Mr. B., CERMI informed IMSERSO (Institute of Social Services for the Elderly) of the difficulties that this wheelchair user had found during a trip organised by the institute to Tenerife: the trip did not respect the accessibility of hotels or vehicles for transporting the group. The response from this body was surprising; they informed Mr. B that the scheme for holidays for the elderly does not cover accessibility criteria and therefore people with disabilities who are wheelchair users, in this case, or who need support, may only take part in holiday schemes for disabled people.

People with disabilities should not be seen as an independent group excluded from society, but as a part of it. In this regard any inclusion policy should ensure their participation in the community on an equal basis with others, so that the services which are available to all citizens are also within their reach on an equal basis to others. Segregational services, policies and benefits belong to the past and should be banished in the new model of human rights and equal opportunities.

An institution which is as emblematic as IMSERSO should be promoting this new concept of disability, including respect for diversity across the board in all the policies and schemes that they organise.

¹² April 2011.

¹³ Human Rights and Disability. Spain Report 2008. CERMI. Convention n° 1 Collection.

In this regard, accessibility should be an essential requirement in any scheme, which would help to drive accessibility criteria and standards on the part of everybody who aspires to promote products and services within this framework.

PROPOSAL FOR IMPROVEMENT

Public procurement may act as a strong catalyst for accessibility and therefore for inclusion in accordance with the new social model for the care of persons with disabilities.

ARTICLE 20 – Personal mobility

VIOLATIONS 20

- Ruling EC 1107/06 on the rights of persons with disabilities or reduced mobility in air travel, a current European standard and directly applicable in all European Union countries including Spain, promotes violations of the right to personal mobility, because it allows companies, using dubious safety criteria, to prevent persons with disabilities using air transport. This has already been condemned by CERMI in previous reports, and complaints are received every year about this flagrant violation of human rights.

- Mrs. H., a wheelchair user, originally from the Dominican Republic, travelled to Spain with the airline Air Europa in 2006 without incident. However, in 2010 she decided to return to her country but Air Europa refused to issue her a ticket if she were to travel unaccompanied. This circumstance was a serious breach of Mrs. H's rights who would first have had to find a person willing to accompany her, pay for another ticket, not just a single but a return ticket, to meet the demands of the airline.

This discriminatory behaviour is protected by the aforementioned ruling which, in the opinion of CERMI, contravenes the Convention.

- Parking permits for people with reduced mobility are causing a great deal of problems with regard to their recognition throughout the different autonomous regions and this is giving rise to violent and humiliating situations for people who travel between autonomous regions using this permit:

In June 2010 a municipal policeman from the town hall of the province of Guipúzcoa threatened to confiscate the blue badge of a person with reduced mobility. The permit, which was legally issued in Soria, and conforms to the European model for reserved parking spaces, was not regarded by the officer as valid “because its edges were not round”. The police officer threatened to confiscate the permit and the car but in the end he did not.

- People with disabilities, are frequently discriminated against by drivers in accessing transport. There may be many reasons, but it is usual that due to mistaken prejudice, drivers see people with disabilities as difficult passengers who require more care and they irrationally impede the mobility of these people with their discriminatory attitudes and behaviour:

- Three taxi drivers parked in the taxi rank of the Hotel Chamartín in Madrid, refused to offer their services to three people with disabilities who were leaving the hotel. The three taxi drivers sent these people from one taxi to another, saying that they were not the first in the queue, there being no other taxis on that rank. When the drivers were asked why they would not take them, amongst other excuses, they were told that there were too many of them for one taxi and that nobody was being picked up at that taxi rank; they were advised to go to another taxi rank at the train station. One of the potential passengers, with better vision than the others, took photographs with a mobile phone of the taxis and was insulted and threatened by the taxi drivers; they were warned against using the photographs. Another taxi driver then arrived at the door of the hotel; he offered his services and picked up the three people when they explained what had happened. The other three taxi drivers started shouting and gesticulating at this driver, insisting that he should not take them, and there followed a short verbal argument. The incident was reported to the Specialist Permanent Bureau of the National Disability Council and Madrid City Council.

- On 2 January 2010 at 14.00 Mr. B, who uses a wheelchair, was at the Parc Tauli Hospital bus stop, for route 80 of the T.U.S., when the driver of bus number 121, who refused to give his name, refused to lower the ramp for him to access the bus because the wheelchair has three wheels.

The same excuse was given to Mrs. H, also a large motorised wheelchair user, who was informed by the bus driver at the Francesc Macià bustop for route 6 of the T.U.S, in Sabadell, that she could not enter the bus in “this type of vehicle”, because only passengers with “conventional wheelchairs” were allowed, although the driver eventually agreed to allow her to get on the bus as a “favour”.

CERMI informed the Mayor of Sabadell of both these incidents.

PROPOSAL FOR IMPROVEMENT

The presence of persons with disabilities is important in the consultation bodies involved in the development and application of public transport schemes to ensure equal opportunities.
Training plans for employees should include awareness-raising on the rights of persons with disabilities.

ARTICLE 21 – Freedom of expression and opinion, and access to information.

This includes the right to expression and opinion in any language or form of communication, including, sign language, Braille, augmentative and alternative communication modes, means and formats, and all means which enable this right to be exercised on an equal basis with others. Accessibility of information is also demanded.

VIOLATIONS 21

- **Public and big company websites are still not meeting accessibility conditions.** In 2010 complaints were lodged under the regime of infractions and penalties set by the LIONDAU, on the failure to meet accessibility obligations for persons with disabilities¹⁴ by the websites of: Alcampo S. A., Grupo Santander, IBERIA, ENDESA, Corporación RTVE, Grupo Gas Natural, Jazztel, Orange and Grupo Avanza.

All proceedings are in the pre-trial phase according to a document from the General Directorate of Sectorial Policies on Disability of the Ministry of Health, Social Policy and Equality, sent to CERMI in February 2011.

- **CERMI contacted the Directors of Facebook, whose head offices are in the Californian City of Palo Alto, in the United States, to request they make a strict audit of their social network site in terms of accessibility and to immediately adopt any necessary corrective measures.**

In the opinion of CERMI, it is not acceptable for these types of digital networks, used by millions of people all over the world, to have issues of accessibility which affect many people with disabilities, preventing them from regularly taking part in community resources.

As this company currently do not have an office in Spain and are subject to American law, CERMI has requested the intervention of the National Disability Council of the United States, to impose accessibility obligations on social networking sites based in their country.

¹⁴ An obligation established by Act 56/2007 of 28 December, on Measures to Promote the Information Society, for certain companies from 31 December 2008.

The United States Council, a North American Federal Government organisation for the promotion and monitoring the rights of persons with disabilities, have launched an investigation into the degree of accessibility of social networking sites, and if these are incurring any form of discrimination or exclusion by not adhering to principles of design for everyone.

GOOD PRACTICE

The General Audiovisual Communication Act, passed in 2010 by the Spanish Parliament, for the first time in our Law, imposes obligations of accessibility to the content of television operators.

The specific accessibility measures which have been established on a progressive scale up to the year 2013 consist of subtitling, audio description and broadcasting in sign language.

To date, only the RTVE Corporation had the legal duty to adopt these accessibility measures, in accordance with the Finance Act passed in 2009.

With the General Audiovisual Act, the obligations of accessibility extend to all television operators which are considered to be public service, and therefore to all national television operators. For example, public service television channels must have subtitled 90% of their entire programming by 2013, and national television 75% by that date.

Although CERMI had asked for higher percentages and more minimum hours of accessible broadcasts than those which were finally approved, they are satisfied that the demands of accessibility legally extend to television, which is a sign that progress is being made towards achieving universal accessibility and ensuring the rights of persons with disabilities.

ARTICLE 24 – Education

- The ever-increasing number of complaints received by CERMI on the subject of **education** is striking. Throughout 2010 thirty inquiries were received, of which twenty concerned situations where the right to an inclusive education is not being respected.

These issues cause great distress to students and their parents, when they do not agree with the administrative decision which obliges their children to attend a special school. This conflict has serious consequences for children, as the delay in both administrative and dispute proceedings creates situations which immediately

infringe their right to education, with serious long-term consequences which compromise their achieving social inclusion on an equal basis with others.

Almost all these situations reflect the shortage of administrative resources to support schooling in mainstream education, and the incompatibility of legislation on education with the right enshrined under the Convention.

- **CERMI of the Valencian Community (CERMI CV) reported the exclusion of disability in the new standard which updates the composition and functions of the School Council, using the amendment to the ruling on School Councils in the Community of Valencia**

CERMI CV appealed this rule with the High Court of Justice of the Valencian Community, as, amongst other things, a violation of article 4.3 of the Convention, which obliges States “to set in motion the channels for civil dialogue to ensure active collaboration with persons with disabilities, through their representative organisations”.

- The state-subsidised school N. S. d. R. in the Autonomous Community of Madrid refused to allow a 16 year old student to take part in the end-of-year trip because she is blind and has diabetes. The student was informed that she could not take part in the trip even with an assistant. This student, who had also been refused any adaptation to some English tests - an examination which contained photographs that she could not see - approached CERMI, via her mother, to request legal information to claim her rights.
- Reasonable accommodations are needed in the area of education to promote inclusive education for a great many boys and girls with disabilities.
 - The parents of a child with Fragile X Syndrome, tried to come to an agreement with the school C.P. CAN RASPALLS in Sant Jordi in Ibiza to help their child reach his full potential through his education. The proposal was to allow a specialist from the association to which they belonged to come into the school in order to adapt a support plan for the child to promote his development in collaboration with the school’s technical teams.

This type of experience has been put into practice in other schools in the Autonomous Region, on the Island of Mallorca to be specific, with very positive results. However this collaboration is not being fostered in the same way on Ibiza which, without doubt, has been to the detriment of this child.

- The student I.P.G., who has a hearing disability and studies in the IES A. G. L. in Santander, asked the school repeatedly for support measures to be put

in place to allow him to gain as much from his lessons as his classmates. As a deaf person who uses sign language he requested the assistance of an interpreter and other adaptations, such as being able to sit in the front rows in class, which would help him to understand the teacher.

CERMI Cantabria intervened on his behalf by contacting the secondary school to make the adjustments and adaptations necessary for the teenager's normal academic development.

These types of measures are covered under the Organic Act on Education and Act 27/2007 which recognises and regulates Spanish sign languages and oral communication support means for the deaf, people with impaired hearing and the deafblind, and they are expressly recognised by the Convention.

Furthermore, Act 27/2007 recognises in its articles 7, 8 and 10, certain obligations with regard to the creation of schools which are bilingual in sign language for deaf people and the promotion of sign language through training teaching staff. Similarly, article 16 of the Act sets out that school administrations should have the necessary means to facilitate oral language learning and oral communication support, in line with current legislation on education. How far measures in this regard have been implemented by the public administrations in the four years since the Act came into effect is unknown.

- The parents of a child with a disability reported the fact that their daughter had not been accepted on a trip to the snow organised between the school and the Provincial Council. They had not even been informed about the trip like the other students and their parents as, because there were no guarantees of accessibility, they considered that it was best that she did not go. After asking for a solution from the Council, the parents were informed that the costs would fall to the school and that they had not accounted for this. The school tried to persuade the parents that their daughter should not go, although eventually one of the pupil's siblings offered to go on the trip to provide the support she needed.

Academic and social development require that support extends to all extracurricular activities organised by the school, in accordance with article 30 d) *"To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities within the school system."*

- **CERMI of the Community of Madrid contacted the Education Council and the Children's Ombudsman about a case of possible discrimination on the grounds of disability at the Music Conservatory of Alcalá de Henares.**

The situation began in October, when a child with a disability who wanted to study piano professionally, was rejected as the Conservatory had not adapted their entrance exams to her disability. It should be noted that the child had undertaken her music studies in a normal way in the Municipal College of Music of Villabilla.

This circumstance was an infringement of the Conservatory of Alcalá de Henares' own Rules of Procedure which dictate that any behaviour on the part of students which discriminates against other students on the grounds of physical, sensory or mental disability, or any other personal condition or social circumstance, is unacceptable. A complaint was filed with the Specialist Permanent Bureau of the National Disability Council.

- The Community of Madrid in applying Organic Act 2/2006, of 3 May on Education (LOE) established a new Primary Education curriculum, with the publication of Decree 22/2007, of 10 May, and the regulation of the implementation, organisation and evaluation of the stages of education using the corresponding developmental standards. In accordance with this, Order 3319-01/2007 of 15 June and Order 1028/2008 of 29 February were passed; these are clearly ambiguous in certain areas in relation to the assessment of students needing adaptations to the curriculum.

All these legislative changes have brought about a situation where, although adaptations to the curriculum are being acknowledged, they are not taken into account when making assessments, which has proved highly damaging to students who are meeting objectives satisfactorily in line with their adaptations, but who are being assessed according to the general targets set for students who do not require curricular adaptations.

This unfortunate situation occurred on repealing the Order of 14 February 1996 on the assessment of students with special educational needs in mainstream education, which did appropriately regulate these conditions.

As a consequence of this, CERMI have received several complaints from mothers and fathers about how their children's' right to equality of opportunities is being infringed in that, although they have curricular adaptations, their assessment is not consistent with these adaptations.

CERMI Madrid has intervened to request the involvement of the Ministry of Education in resolving this situation.

- The Spanish Confederation of Deaf People's Families -FIAPAS - approached the Ministry of Education's Subdirector General of Study and Mobility Grants and Assistance for Professional Development, complaining that

Royal Decree 557/2010 which establishes the income and family capital thresholds and the amounts of study grants awarded by the Ministry of Education for the academic year 2010-11, does not offer equal opportunities to all university students with disabilities as the improvements made apply to a degree of disability of 65%.

University students with impaired hearing rarely have a 65% degree of disability. However, in order to exercise their right to university study on an equal basis with others, they require support means which involve a considerable financial outlay which is not covered by any improvement as they do not meet the established degree of disability to qualify for study grants.

CERMI MANIFIESTO 3 DECEMBER 2010, CERMI

1. Calls for the public authorities to guarantee the principle of standardised access for students with disabilities to mainstream educational resources, without discrimination or segregation of any type on the grounds of those disabilities, and to provide the necessary support to make inclusion in an open educational environment always a reality. To that end, educational needs must be identified early, and the availability of human, teaching and technological and other resources which appropriately meet the particular needs of every student, must be ensured.

The early detection of educational support needs, in particular those associated with a disability, will enable comprehensive care for students, which is guided by the principles of equal opportunities, non-discrimination, universal access and design for all, and result in truly inclusive education.

2. Calls for national and regional legislation to be urgently revised and updated in the area of education in order to fully adapt it to the inclusive education paradigm established under the International Convention on the Rights of Persons with Disabilities signed and ratified by Spain, and for the continuation, emergence of or investment in models or structures which do not correspond to the right to an inclusive education to be abolished for good.

3. Proposes that in the unpostponable and irreversible process of transition towards full educational inclusion, the non-standardised educational structures which still exist in our country, should move towards complete convergence with the inclusive education model and become, through the transitional stage which must be started, resources and support means for successful teaching in mainstream environments.

4. While moving towards an education system consistent with the principle of inclusion, we call for legislation to make it mandatory for students with disability or their families to be free to choose their process of education, that their preferences should be respected, and that the appropriate reasonable accommodations should be made to that end. In line with the mandate under the Convention on the Rights of Persons with Disabilities, the selection process must always be governed by the “pro inclusive education” principle. In no case will it be acceptable for the competent education authority to oblige students to be educated in special schools, which should be abolished.

5. Reminds that the principles of non-discrimination, universal accessibility and design for all should be included in all teaching, learning and assessment processes, in the application of teaching materials and new technologies and in the content of training and skill acquisition for teachers.

6. Requests that appropriate qualification and updated skills are furthered both in the initial and the ongoing training of teachers and education professionals in order to meet the academic needs of students with disabilities, towards the medical, scientific, technological and social evolution which results from the day to day improvement of their personal and educational situation.

7. Calls for education schemes in schools to include diversity care plans which are reflected in their quality indicators, and in the application of the principle of equality.

8. Requests that new technologies adapt to the principle of universal accessibility, the design for all strategy and the practice of reasonable accommodation so that students with disabilities find in them an opportunity and not a barrier to accessing information, communication and knowledge.

9. Calls for schools educating students with disabilities to establish, for those who require them, flexible and /or alternative measures in foreign language learning, and in the requirements for accreditation of level attained, particularly in relation to oral expression.

10. Proposes that design for all and universal accessibility are included in the training curriculum proposal and in the acquisition of skills covered under the various higher education qualifications.

11. Reminds of the necessity to ensure that the Plan for Study Grants is available to all students with disabilities, regardless of the degree and type of disability.

12. Requests the co-ordination of the staff teaching the different levels and the appropriate educational and psychological guidance in order for students with

disabilities to pass through the different educational stages, to enable their professional development and entry into the work place.

13. Proposes that the competent administrations develop and implement, without further delay, the mandates on education covered under Act 27/2007, of 23 October, which recognise Spanish sign languages and regulate oral communication support for deaf people, people with impaired hearing and the deaf blind.

14. Calls for the actions needed to promote the educational inclusion of girls and teenagers with disabilities, to remedy the clear disadvantage facing this social group within the educational environment, which makes the subsequent entry into the work market and community difficult for women with disabilities.

15. Calls for the finance measures to be adopted to ensure that no student with a disability is deprived, due to a lack of financial resources, of the right to access high quality inclusive education.

16. Proposes that the associations which represent persons with disabilities are considered and their participation and co-responsibility is included in the new system of governance of the education system which is to be introduced, and that they should also be considered important players within the education system.

17. Within the framework of the European Strategy 2020, which makes academic success and improved educational levels essential priorities for the next decade, we call for the mechanisms and resources needed to reduce the school drop-out rates which are a consequence of a failure to adapt resources for people in need of support, in order to achieve a situation of equal opportunity. Educational level indicators are needed to offer precise information in order to gain a complete picture of the situation of people with disabilities.

18. Reminds that the European Disability Pact, promoted by the European Disability Forum, includes equality of access and opportunity in education amongst its priorities.

ARTICLE 25 – Health

VIOLATION 25

- As has already been mentioned in previous reports, people with disabilities have health needs which require care in the public health system; both general health needs and specific health needs when these originate from their specific disabilities.

It is also necessary to bear in mind that other factors may coincide which increase their vulnerability and cause people with disabilities additional difficulties in exercising their rights. Amongst this group are women with disabilities, people with mental disorders, people with disabilities who need a high level of support, immigrants with disabilities and people with disabilities who live in the rural environment.

During 2010, CERMI worked on the proposals for the forthcoming Public Health Act, currently in process, from the research study on Public Health and Disability which was published in 2010¹⁵:

The forthcoming Public Health Act must ensure the resources necessary so that all those who require healthcare other than the routine, as they have special personal or social needs, may develop their personal capacities to the full and, in all cases, may attain the health objectives set for all citizens. It must also establish the procedures which allow early identification of the health needs of citizens who require healthcare other than the routine, and it must guarantee that the comprehensive care for citizens with specific public health support needs is guided by the principles of standardisation and inclusion.

All public health schemes need to be aware of the health risk status of persons with disabilities and include measures which are specifically aimed at promoting their health. To that end it is necessary for persons with disabilities and their organisations to take part in the planning and implementation of the essential public health services, and that co-operation and alliances with public administrations, the civil society, citizens with disabilities and the organisations which represent them is encouraged in the creation of projects and programmes for the promotion, protection and improvement of individual and collective health which respect the specific health needs of persons with disabilities.

The access of persons with disabilities to the health system also requires strict compliance with measures for accessibility, including communication safeguards, which ensure access to benefits and services on an equal basis to others.

- Due to a failure to provide accessibility measures in a Tenerife health centre, in 2010 CERMI received a complaint from a person who reported the absence of a ramp or platform to enable them to enter the dialysis unit that they had to attend every day.

¹⁵ Jiménez Lara, Antonio. *Salud pública y discapacidad. Planteamientos y propuestas del sector social de la discapacidad*. (Public health and disability. Approaches and proposals from the social sector of disability). Colección CERMI.es N^o 44. Madrid 2010.

PROPOSAL FOR IMPROVEMENT

CERMI presented their proposals for the Preliminary Public Health Bill, which contained:

- Ensuring appropriate support and assistance measures for decision making in the case of persons with learning difficulties and difficulties in expressing their will, so as to respect the right to make free choices concerning their personal health on an equal basis with others.
- Training of health staff to ensure that they respect the human rights of persons with disabilities on an equal basis with others, and in everything in relation to the care of persons with disabilities.
- The prevention and early detection of rare diseases.
- Prevention and early detection in order to fully limit further disability.
- The comprehensive promotion of the health of persons with disabilities, including their sexual and reproductive health.
- The participation on the Public Health Advisory Committee and other health system advisory bodies of people with disabilities via the associations which represent them.
- The access of persons with disabilities to health insurance on an equal basis with others.

In addition, as we have been requesting, it is suggested that the orthoprosthetic service portfolio is revised and a real social health model implemented after the new scenario provided for by Act 39/2006 creating SAAD, to transform the current model of fragmented areas of responsibility into a model of user-orientated shared responsibility.

ARTICLE 26 – Habilitation and rehabilitation

PROPOSAL FOR IMPROVEMENT

Rehabilitation, although covered under Royal Decree 1030/2006, of 15 September, which sets out the National Health System's portfolio of common services and the procedure for its update, is mainly aimed at the acutely sick and to a far lesser extent at people with chronic illnesses and disabilities, who tend to be discharged after a short rehabilitation period. Consequently, the extraordinary potential of rehabilitation to improve functional capacity, to prevent injury, to prevent or delay deterioration in health and to promote the autonomy of a great many people is not being fully exploited. Therefore it is essential to work resolutely towards improving the availability, quality and efficacy of rehabilitation resources and provision.

Rehabilitation treatments should start as soon as the disability has been detected in order to ease the associated psychological, social, work and financial consequences: therefore, it is absolutely necessary that when a medical service detects a disability they should immediately refer the affected person to an appropriate rehabilitation service. And the rehabilitation should continue as long as it is necessary, especially for diseases and disabilities which require ongoing rehabilitation, in order to prevent the progression of disease or injury and to preserve and, where possible, strengthen any remaining capabilities¹⁶.

ARTICLE 27 – Work and employment

The right to employment carries with it free choice on an equal basis with others and not being excluded from the work market on the grounds of disability, and it also requires the implementation of active measures to guarantee equality and non-discrimination in this area.

VIOLATIONS 27

- **Public sector employment services generally do not have departments which specifically deal with the needs of jobseekers with disabilities.** This shortcoming means that they have very little effect on the job searching results for this type of worker.

In order to correct this situation, CERMI has requested that the agreements of the State with the public sector services of the Autonomous Communities, in charge of employment management, should include the obligation to set up advisory units in every employment office for the employment of people with disabilities and for companies who are able to employ them.

Likewise, the collaboration of non-profit employment agencies with public sector employment services is already proving to be a very important element in combining resources in order to offer greater opportunities to people with disabilities.

Should the existence of employment agencies which operate for profit be allowed, these should devote some of their activity to groups of workers with special difficulties in accessing employment, such as people with disabilities.

¹⁶ Jiménez Lara, Antonio. *Salud pública y discapacidad. Planteamientos y propuestas del sector social de la discapacidad*. (Public health and disability. Approaches and proposals from the social sector of disability) Colección CERMI.es Nº 44. Madrid 2010.

Furthermore, these private agencies must comply with accessibility standards and ensure that their activity is transparent and follows principles and rules to prevent any discrimination in access to job offers due to personal or social conditions, including disability.

- **The failure to adapt tests, for persons with intellectual disabilities to access public sector employment, violates their right to equal opportunities and invalidates the positive effect of job reservation.**

For the second consecutive year, the public sector employment offer from the General State Administration approved a 2 % reservation of jobs for people with intellectual disabilities, in addition to the legal reserve of 5 %.

However, the efficacy of the public sector employment reservation quota for people with disabilities is subject to the correct adaptation of tests, in accordance with the needs and characteristics of these candidates, in order to guarantee them equal opportunities. Currently work is ongoing with the General State Administration to appropriately adapt the tests so that they are fair for applicants with intellectual disabilities.

- In this regard, CERMI received a complaint about the conditions of the first convocation for 64 posts reserved for people with intellectual disabilities, of which only ten were covered. The complaint argued that the principle of equal opportunities had been infringed in several ways including a failure to adapt the agenda and the non-existence of a minimum admission grade for people with intellectual disabilities, differentiated from that for people with general disabilities, which was differentiated from the admission grade for candidates without disabilities.

The complaint was presented to the Specialist Permanent Bureau (OPE) of the National Disability Council, who indicated the need for research into new measures to help people with intellectual disabilities to access public sector employment.

- During the preparation of the Organic Bill on the Rights and Duties of Members of the Armed Forces, CERMI requested that the list of exclusions should be adjusted to prevent discrimination on the grounds of disability, and to that end they propose that the cases where having a disability is considered incompatible with performing a professional activity be appropriately assessed.

The proposed amendments also suggest legislative change to eliminate indirect discrimination towards military personnel with disabilities in the development of their military career, in order to make it adapt to legislation on disability and to the Convention. In particular, the aspects concerning reasonable accommodations to

make adjustments to the jobs of military personnel who become disabled need to be developed.

PROPOSAL FOR IMPROVEMENT

CERMI propose that article 30.6 of Act 55/2003 should extend the reservation quota to internal promotion tests.

It is also proposed that in the training processes for care homes there should also be a reservation quota for people with disabilities.

ARTICLE 28 – Adequate standard of living and social protection

- CERMI has contested Decree 15/2010 of 4 February of the Xunta de Galicia (Regional Government of Galicia) in the courts, as it contains provisions which are prejudicial against persons with disabilities because their intention is to defer recognition of the entitlement to benefits and services. Inactivity on the part of the government and the slowness of proceedings have created a situation of vulnerability for those people who are entitled to care in order to further their personal autonomy, yet cannot claim their protection. In this regard, a request has been made in the courts calling for articles 30.2 and 39.1 and of the additional fifth Provision of the Decree to be declared unlawful.
- 21 percent of the inquiries received by CERMI during 2010 referred to social benefits. Many indicated the need to make all benefits compatible with paid work. The extra costs caused by disability have to be covered and frequently income from work is insufficient, as this income is often low. Making the financial benefit system more flexible could not only improve their standard of living, but also the unemployment rates, which often conceal a perverse situation in the system which acts as a disincentive to work, because if the person loses their benefit (generally non contributory) in exchange for what they earn by working this is not financially viable for them.

ARTICLE 29 – Participation in political and public life

- **Current electoral legislation in Spain allows the right to vote, active and passive, to be denied to people who have been legally incapacitated, as long as the ruling declaring the incapacitation expressly provides for this.**

This possibility also extends to people who have been detained in psychiatric hospitals by legal authorisation, during the period of their detention, as long as the

authorisation of the judge expressly states the incapacity to exercise the right to vote.

This deprivation of fundamental rights, which principally affects people with intellectual disabilities or mental illness, makes no sense from a human rights perspective and clearly contravenes the Convention, firm and ratified by Spain.

Article 12 of this international treaty establishes the full legal equality of persons with disabilities in all areas of life, with no restrictions on the grounds of disability. Moreover, article 29 expressly ensures the right of persons with disabilities to participate in political life and in the electoral process with no type of exclusion whatsoever.

In this regard current Spanish legislation is incompatible with the UN Convention, and therefore must be urgently amended in order to enable people with disabilities to fully exercise their basic rights.

CERMI has requested the intervention of the Ombudsman towards amending the Organic Act on the General Electoral System to prevent any possibility of persons with disabilities being deprived of their right to vote.

ARTICLE 30 – Participation in cultural life, recreation, leisure and sport.

VIOLATIONS 30

- A public sector employee of the “Las Columnas” library in Triana, Seville, refused to allow a child of seven to take out books on the grounds of his disability. The child’s aunt, who was with him, explained that they were both members of the library and when she protested the library employee said that she should not bring the child to the library if he did not know how to take care of the books. These types of situations are often produced by the lack of awareness and means to ensure that persons with disabilities have access to public services.

- During the eleventh European Dance Championships held in Torremolinos from 22 to 27 February 2010, Mrs. L. M. C. was not able to participate in the Dance of the Emperor Parade. According to the statement from her father, the event’s Director, Mrs. B.B, said that the fact that she used a wheelchair “was not in line with the aesthetics of the event”.

Even though they had been informed a month before that L.M.C. would be taking part in the procession, the necessary measures of accessibility were not put in place to guarantee her full participation in the Championships on an equal basis with others - this was also the fourth year that she had taken part.

This incident constitutes a serious case of discrimination on the grounds of disability and therefore CERMI has requested the direct intervention of the town's Mayor for compensation and to prevent a recurrence of this sort of behaviour in the future.

We must be able to identify the reasons behind the restrictions to certain activities. We must find out whether these limitations are due to a person's specific disability or whether they are added obstacles which can be resolved by taking the appropriate measures or, simpler still, by taking into account the needs of everybody when these activities are designed.

In this case the *Gran Baile del Emperador* (The grand dance of the Emperor) was not conceived as a strict competition, and the only requirement made of the people taking part is to wear the appropriate costume. Without having to make it clear that a person with a disability can dance - there are shining examples of this skill - it seems completely unjustifiable for a person in a wheelchair to have to meet different requirements and not be allowed to enter a pageant arguing that she might spoil the aesthetics of that pageant or claiming unjustified safety reasons against it.

An event of this type, which is designed for social participation, cannot take place without considering citizens with disabilities who are an integral part of society, to do so would be to discriminate against and violate many of the rights which are enshrined in the Convention.

- The Madrid Amusement Park which belongs to the Parques Reunidos Company has posters which explicitly forbid children with disabilities from using some attractions. This prohibition is made on pictograms located at the exit from the attractions, where there are three pictures: one representing a person in a wheelchair, another representing a blind person with a stick and a text which reads "*mentally impaired*", each case has a red cross through it and text indicating that access is forbidden. (Photos are shown below).



CERMI drew up a report for the mother of one of the children who had been a victim of this discrimination and reported the events to the Specialist Permanent Bureau of the National Disability Council, who did not wish to give their assessment of this conduct as they considered that it occurred in an autonomous area outside their area of responsibility.

- Mr C. M. O. and Mrs P. P. V. bought a cruise on MSC Magnífica, with their minor child M., who because of his disability was not allowed to remain in the children's area, unless accompanied by a parent.

When the parents complained, they were at first informed of an internal rule obliging children with disabilities to be accompanied, however in a subsequent letter the Director of the company denied the existence of any such rule. This behaviour was reported to the Specialist Permanent Bureau of the National Disability Council who claimed to have no jurisdiction over the matter. These types of general attitudes are lacking in any real client focus, and might even constitute behaviour which could be sanctioned as discriminatory.

- ONCE in Tarragona reported what happened to J. E. H., a young, blind sportsman who was prevented from joining a gymnasium in Reus because he was not accompanied by a personal trainer.

J. E. H., is a young footballer who is able to get his bearings and play sports with a good deal of skill, as demonstrated by his being called to play for the national five-a-side football team for persons with disabilities. This quite frequently occurs in gymnasiums and the technical staff in these establishments which are open to the public, should receive training against committing this sort of flagrant discrimination.

- The owner of a late-night bar in Alicante who turned away three young people with Downs Syndrome when they wanted to have a drink on a Saturday night, was reported by the Downs Syndrome Association of Alicante (DOWN ALICANTE), the organisation to which the injured parties belong, and after admitting the incident he was sentenced to one year's loss of licence by a judge.

The prosecutor's office considered that article 512 of the Penal Code had been infringed, which is liable to a sanction of between one to four years' professional disqualification for anyone who, in the course of their job, denies a person a service to which they are entitled on the grounds of their having a disability.

ARTICLE 31 – Statistics and data collection

CERMI has drawn up a proposal for indicators on the employment of persons with disabilities to be included in Spain's reform plans, in order to meet the European Strategy 2020 and the employment policy directives to apply this strategy.

PROPOSAL FOR INDICATORS TO MEASURE PROGRESS IN THE AREA OF THE EMPLOYMENT AND TRAINING OF PERSONS WITH DISABILITIES

This is aimed at obtaining in a limited number of indicators all the information needed to gain a complete picture of the situation of people with disabilities in relation to employment, including education and training, as essential employability factors.

BASIC EMPLOYMENT INDICATORS

- The activity rate of persons with disabilities, by gender, age, type and degree of disability, congenital/birth and acquired disability. National and Autonomous Regions

- The employment rate of persons with disabilities, by gender, age, type and degree of disability, congenital/birth and acquired disability. National and Autonomous Regions

- The unemployment rate of persons with disabilities, by gender, age, type and degree of disability, congenital/birth and acquired disability. National and Autonomous Regions

Source: a) Active Population Survey, National Institute of Statistics: there are currently no available data on a regular three monthly basis; only the second quarter 2002 is shown

b) Survey on Disabilities, Personal Autonomy and Situations of Dependency 2008

- Number of unemployed with disabilities registered with the public employment services, by gender, age, type and degree of disability, congenital/birth and acquired disability. National and Autonomous Regions

Source: The monthly statistics of the Public Employment Services (SPEE) are not published on the website with the breakdown of unemployed people with disabilities. There is probably no information available by type and degree of disability, congenital/birth and acquired disability.

- Number of job contracts given to people with disabilities, by type of contract, gender, age, type and degree of disability, congenital/birth acquired disability. National and Autonomous Communities

Source: Monthly statistical information is published on the employment of persons with disabilities within the framework of the State Disability Observatory. There is no information available by type and degree of disability, congenital/birth and acquired disability

INDICATORS FOR EDUCATIONAL LEVELS

- The rate of completed studies by children and young people with disabilities, by gender, type of disability, level of study (from primary to university) and inclusion or non-inclusion in mainstream, rural or urban schools.

- The school drop-out rate of children and young people with disabilities, by gender and level of education at which they left school.

- The rate of participation of young people with disabilities in training activities for employment, by gender and work situation (employed/unemployed)

Source: Non recurrent data. Survey on Disabilities, Personal Autonomy and Situations of Dependency 2008. Covering rates of completed study. Not including the inclusion factor, the school drop-out rate and the rate of participation in training activities for employment.

PROPOSAL

The statistical sources need to be altered, opting for one of the following two options:

- Include the necessary data on disability in the quarterly Active Population Survey.

- Include the data required on Public Employment Services statistics, on registered unemployment and job contracts.

In addition and wherever possible, assuming that indicators on employment and education are essential to achieve the objectives of European Strategy 2020, it would be advisable for indicators on maintaining employment to be included in order to reinforce the above, as they would contribute towards keeping 75 % of the population employed and reducing the risk of poverty.

PROPOSAL FOR INDICATORS ON MAINTAINING EMPLOYMENT

- The rate of workers of employment age who keep their employment after an acquired disability (due to an accident or other causes), by gender, age, type and degree of disability (in relation to the total people employed of employment age who have suffered an acquired disability), by type of contract and whether in a rural or urban environment.

- The rate of workers of working age who lose their employment after an acquired disability (due to an accident or other causes), by gender, age type and degree of disability (in relation to the total number of employed people of employment age who have suffered an acquired disability).

Source: Non recurrent data. Survey on Disabilities, Personal Autonomy and Situations of Dependency 2008. Gathers data on people with disabilities who have changed their activity or occupation due to disability, by type of disability (without distinguishing whether it is congenital or acquired) age and gender, as well as people with disabilities who work or have worked according to whether they started their first job before or after the disability by disability group and gender.

III. CONCLUSIONS

In meeting their obligations, two years after the Convention came into effect (article 35.1), in May 2010 the Government of Spain presented the first report on the human rights situation of people with disabilities and the application of the Convention since its implementation in our country¹⁷.

The Report was presented to the United Nations' Committee on the Rights of Persons with Disabilities, who monitor compliance with the Treaty and it will be the subject of *General Observations* in September 2011.

CERMI, as an independent body monitoring the Convention in Spain, submitted an *Alternative Report* to that body¹⁸, with the aim of ensuring the best use of the Committee's recommendations and observations to achieve the correct application of the Treaty in our country.

By way of summary, it can be noted that CERMI has highlighted the following violations of the Treaty in their report:

¹⁷ http://www2.ohchr.org/SPdocs/CRPD/5thsession/CRPD.C.ESP.1_sp.doc

¹⁸ http://www2.ohchr.org/SPdocs/CRPD/5thsession/CERMI_Spain_5thSession_sp.doc

1. **Violations arising from a conflict between Spanish legislation and the Convention:** such is the case with *eugenic abortion* permitted under article 15 of Act 2/2010 of 3 March on sexual and reproductive health and the voluntary termination of pregnancy; the Organic Act on Education, which does not prevent the mandatory segregation of boys and girls with disabilities due to a lack of resources in mainstream schools; the system for legal incapacitation regulated under the Civil Code and in the Civil Procedure Act, whose provisions allow deprivation of the right to vote, forced sterilization (article 156 of the Penal Code) or access to justice, as people with disabilities can find that their legal standing to lodge an appeal or a complaint pursuant to a court ruling is limited¹⁹.

Throughout the three years since the Convention came into force other regulations have been identified²⁰ which are incompatible with the International Treaty and which must be amended, such is the case with article 182²¹ of the Ruling on Notarial Acts which prevents certain people with disabilities from being notarial witnesses.

2. **The lack of a human rights perspective:** the lack of protection against discrimination under the LIONDAU when the victim does not have a recognised degree of disability of 33% and the need to make positive action measures more flexible where there is discrimination on the grounds of disability requiring measures to ensure equal opportunities were particularly highlighted as problems.

As shown in the section of the Report devoted to Article 19, the System for the Autonomy and Care of Dependency (SAAD) lacks a true human rights perspective. In this regard, the official data on the implementation of the SAAD reflect that welfare-orientated benefits are being widely developed but that there has been little development in the way of benefits to promote personal autonomy, independent living and social inclusion. According to information from the Ministry of Health, Social Policy and Equality, out of the number of beneficiaries covered under the SAAD, who total 800,009 people, only 12,351 are receiving benefits to promote their personal autonomy; out of these 747 have a personal assistant. Age limits still apply in this area in order to be able to claim certain benefits; people under sixteen years of age in particular cannot opt for a personal assistant in Catalonia because the regional regulations prevent this.²²

¹⁹ Article 7.1 Act 1/2000 on Civil Procedure and article 102 of the Civil Procedure Act.

²⁰ Identified from the annual human rights reports and other research studies realised to that end by CERMI. All are available at www.cermi.es.

²¹ "Article 182. The following are incapable or unfit to be witnesses to deeds: 1st people with mental disabilities, the blind, the deaf and the mute (...)".

²² *Human Rights and Disability. Report Spain 2008*. CERMI. Convention Collection nº 1.

The lack of a human rights perspective is also observed in the degree of participation of people in setting up their individual care plan. Social awareness needs to be raised on the right to participation of persons with disabilities in all the decisions which affect them and especially in the design of policies, laws and schemes, through the organisations which represent them.

3. Violations caused by the **lack of equal opportunities**: these situations frequently arise from a failure to comply with laws or a lack of resources and measures to ensure that all obstacles are eliminated and to guarantee people with disabilities the same opportunities as others.

In this case, the emphasis must be placed on the structural infringement of accessibility standards.

It is also essential to adopt a real gender perspective in policies for the care of people with disabilities or for general policies to incorporate a perspective on disability across the board, especially in the care of women and minors. Both issues require willingness and commitment on the part of the public authorities, without this any actions undertaken run the risk of being ineffective.

As in other years, the report from CERMI's legal advisory services reveals the desperation of thousands of people with disabilities who do not have appropriate measures for accessibility in their homes. This circumstance confines them and makes them dependent. The Government have made a commitment to solve this distressing problem which is essential to the dignity and the rights of people with disabilities, within this term of office.

Independent living and the right to be included in the community require the services which are available to the public also to be available to people with disabilities. In this regard, we flag up the rural environment and immigrants with disabilities who often do not have the same access to public goods and services.

IV. STATISTICAL ANALYSIS OF THE INQUIRIES RECEIVED BY CERMI

During **2010** the **number of inquiries** received by CERMI's legal advisory services and the action taken totalled **408**.

There were 207 inquiries in 2009 and therefore the number of service users who have approached CERMI has doubled.

The **inquiries** came from people with disabilities and their families; organizations of the associative movement for people with disabilities, in the majority directly or

indirectly members of CERMI, public administrations, especially from the autonomous regions, or private companies.

The **inquiries were classified** into two types:

- **276 inquiries** per se, when simple information or legal guidance was sought on a question in relation to disability.
- **132 complaints** from people who felt they had been discriminated against on the grounds of their disability, in the exercising of a right.

The inquiries classified **by gender** show the following: 235 affected men, of which 17 were in relation to minors; 160 inquiries were presented by women, of which 16 concerned girls with disabilities. The remaining inquiries, totalling 13, affected both men and women, generally because they were brought by legal persons and concerned general rather than specific situations.

The inquiries received over this period can be broken down as follows and into these **subject areas**:

ADMINISTRATIVE LAW: 111 inquiries. 27 percent of the total.

SOCIAL SECURITY: 106 inquiries. 26 percent of the total.

CIVIL LAW: 61 inquiries. 15 percent of the total.

LABOUR LAW: 46 inquiries. 11 percent of the total.

DISCRIMINATION AND EQUALITY OF OPPORTUNITIES: 35 inquiries. 9 percent of the total.

PENAL: 5 inquiries. 1 percent of the total.

COMMERCIAL: 7 inquiries. 8 percent of the total

FISCAL: 34 inquiries. 8 percent of the total.

MILITARY: 3 inquiries. 1 percent of the total.

The **areas** or issues about which there were repeated inquiries or which are particularly worth highlighting are the following:

- 81 (20%) were in relation to the area of **employment**, almost half to do with public sector employment: the reservation of places in tenders for public sector jobs, recruitment aid, job adaptation (both cases in Public Administration).
- 84 inquiries (21%) referred to **social benefits, principally** in relation to early retirement and the compatibility of benefits of all types with paid employment.
- 35 inquiries (9%) concerned **housing**, almost always to remove barriers to buildings subject to the Horizontal Property Act and the provision of social housing.

- 14 inquiries (3%) are in relation to **transport** including problems with recognising the parking badge in the different autonomous regions and the failure to enforce prohibition of parking in reserved spaces, and incidents on public transport (rail, air and road travel for passengers in urban and interurban areas).
- 30 inquiries concerned the area of **education**, most referring to mandatory education (20). As occurred last year, the inquiries in this area concern the unwillingness of parents or guardians to move their children to special schools, which goes against the administrative decision which compels them to do so. There are also frequent complaints about the lack of support and accommodations in this area towards the educational inclusion of the children with the greatest support needs. In non-mandatory education the most frequent inquiries concerned the lack of adaptation of the theory or practical tests involved in this type of education.
- 35 inquiries came from situations of discrimination and the violation of the right to equal opportunities directly in relation to the **LIONDAU** either because this act or its implementing regulations had not been developed or were not being met.
- 29 inquiries related to the application of tax **benefits** for people with disabilities, principally with regard to the reduced rate of VAT and registration taxes for people with reduced mobility.
- There were eight questions concerning the **family** and other areas are worth noting such as: the recognition of the **situation of dependency**, assessment and benefits (21), access to justice (2), insurance (5), (2) concerning technical aids, health (6), protected assets (5), legal incapacitation (13), (18) on issues concerning degree of disability recognition, (11) due to possible offences against physical or moral integrity, and (2) relating to the communication and image of people with disabilities in the media.

CONCLUSIONS

FIRST.- The inquiries dealt with in 2010 doubled in comparison with the year before, the subjects that have engendered increased inquiries in relative terms have been issues of direct or indirect discrimination affecting compliance with the LIONDAU and have increased over the total, from 3% in 2009 to 9% in 2010, the total issues being multiplied by five; the fiscal questions which constituted 3% of last year's inquiries, were 8% this year and those concerning the Social Security went from 20 to 26 percent over the total.

SECOND.- **Growing and significant numbers of issues** are perceived by the people making the inquiries as situations which are violating their rights, **referring to discrimination and a lack of equal opportunities.** Almost all of them concern the lack of access to both private and public goods and services and the lack of appropriate support for the inclusion in schools of minors with disabilities.

THIRD.- The following can be highlighted as recurring themes, which are significantly litigious and give rise to inquiries from people with disabilities and their families:

✓ **The employment** of people with disabilities generates a great deal of inquiries both in the public and the private sectors. Recruitment aid and the problems presented by the system of exclusion from Social Security Contributions are very regular themes.

✓ 31% (127 inquiries) are directly in relation to questions about the failure to comply with or the lack of **accessibility**, in the broadest sense. On 39 occasions the problem posed raised the need for reasonable accommodation to be put in place, generally in employment and education.

✓ The **elimination of barriers in buildings subject to the Horizontal Property Act**. This is an issue which continues to generate a great deal of inquiries and disputes; disagreements in communities are constant and the financial costs are too high to be borne by the people directly affected.

✓ The **compatibility of paid work and the right to receive pensions or state benefits** in their different forms, and the compatibility/incompatibility between the state benefits. This area has seen an increase compared to last year.

✓ **Personal autonomy and the care of dependency** continue to be an area generating a deal of dispute.

✓ **Access to goods and services** both public and private, 5% of inquiries concern this issue (19) it is a growing area in response to the failure to apply universal accessibility criteria - people with disabilities are now demanding this as an essential condition in exercising their rights.

FOURTH. - Fewer women than men are requesting our services, even though there are more women than men with disabilities.

FIFTH.- the constant increase is striking in inquiries on **inclusive education**. These general issues are causing a great deal of distress to fathers, mothers and students when they do not agree with an administrative decision obliging their children to attend a special school. This conflict has serious consequences for the children as the bureaucracy in both administrative and dispute proceedings, creates situations which are immediately harmful to them with regard to their right to an education and, in the long term, seriously damage their possibilities of social inclusion on an equal basis with others. Almost all the situations reflect the lack of administrative resources for academic support in mainstream schools.

V. REPORTS PRESENTED IN 2010 BY OTHER INSTITUTIONS: SPECIALIST PERMANENT BUREAU OF THE NATIONAL DISABILITY COUNCIL, THE OMBUDSMAN AND RELATED AUTONOMOUS BODIES.

A. ANNUAL REPORT 2010 OF THE SPECIALIST PERMANENT BUREAU OF THE NATIONAL DISABILITY COUNCIL

INQUIRIES AND COMPLAINTS

Out of the 238 cases in 2010, **123 complaints** to be studied and analysed by the Specialist Permanent Bureau and **115 inquiries for advice** were presented.

- According to areas of application of the LIONDAU and gender.

AREA OF ACTION	N ° OF CASES	%	Men	Women
Telecommunications and information society	30	13	16	6
Public urban spaces, infrastructures and building	37	17	22	9
Transport	10	4	5	2
Goods and services available to the public	25	11	12	7
Relations with the public administrations	121	54	57	63
TOTAL	223	100	112	87

- **Cases per Autonomous Region**

Andalusia	16
Aragon	3
Asturias	3
Castilla-León	4
Castilla-La Mancha	6
Catalonia	14
Extremadura	4
Galicia	5
Canary Islands	5
Community of Madrid	159
Navarre	2
Basque Country	5
Valencian Community	12

Balearic Islands	3
La Rioja	0
Cantabria	4
Murcia	12
Ceuta	0
Melilla	1
Not recorded	1

1. TELECOMMUNICATIONS AND INFORMATION SOCIETY.

List of the main contents in the area of telecommunications and the information society.

Reason	Amount
Reported for lack of accessibility to websites	14
Lack of accessibility with subtitling on DTT	7
The use of terminology which does not comply with current legislation	6
Measures to improve accessibility to the information society	2
Absence of accessibility in conference halls	1

The Specialist Permanent Bureau (OPE) highlight in their report that “*when it is a question of access to leisure in audiovisual format there are still communication barriers preventing people with communication problems gaining that access*”. It also mentions the need to create subtitlers and audiodescribers on audiovisual media.

2. PUBLIC URBAN SPACES, INFRASTRUCTURES AND BUILDING.

List of the main contents in the area of public urban spaces and buildings.

Reason	Amount
Access ramps to dwellings and wheelchair lifts	17
Lack of accessibility to public premises	9
Lack of accessibility to car parking for the disabled	7
Video-entrance intercoms in Housing Communities	3
Lift installations in Housing Communities	2

This section highlights the Specialist Permanent Bureau’s reference to a complaint presented by CERMI about the Accessibility of the Alhambra. On this matter “*The Specialist Permanent Bureau will suggest to the National Disability Council that a*

recommendation be made to perform the necessary works to achieve maximum (accessibility) in the Monument of the Alhambra and the Generalife”.

3. ACCESS AND USE OF TRANSPORT.

Reason	Amount
Places reserved for persons with disabilities on the AVE high speed train	3
Lack of accessibility on commuter trains	3
Renfe’s website is not accessible	2
Inquiry about the Blue Badge	1
No wheelchair access to municipal bus service	1

This section particularly covers the updating of Renfe (Spanish Rail Company) and the need to make subsidies available for air transport for people with reduced mobility because, as CERMI reported in their Report 2008, as applicable legislation allows the airline to insist that passengers with disabilities are accompanied this constitutes a considerable financial burden. The Specialist Permanent Bureau concludes that “(...) the only way to rectify this matter would be to obtain subsidies via a legally binding standard which would have to be approved by the Ministry of Finance to be funded out of the State’s General budget, it would be very restrictive on the type of disability, the frequency and the need to use air transport”.

4. GOODS AND SERVICES AVAILABLE TO THE PUBLIC.

List of the main contents in the area of goods and services available to the public.

Reason	Amount
Lack of accessibility in museums	9
Discrimination in shopping centres	7
Failure to comply with regulations in car companies	5
Refusal of medical insurers to underwrite persons with disabilities	2
Regulation of accessible labelling	2

This section particularly highlights:

- The complaint regarding accessibility to theatre and stages.
- The terminology on disability used in the media, specifically in the newspaper *20 minutos* which does not adapt to the new social model aiming at preventing the use of pejorative words such as “handicapped”, etc.
- The refusal of a gymnasium to allow a young blind man to join, included in the section on article 30 of this report – the comment from the Specialist Permanent

Bureau was *“At present there are several routes towards ensuring that the owners of leisure, sports, cultural and recreation facilities can admit persons with disabilities into their installations. Through awareness-raising campaigns publicising the fact that people with disabilities are potential clients.”*

5. RELATIONS WITH PUBLIC ADMINISTRATIONS.

List of the main contents in the area of relations with public administrations

Reason	Amount
Inquiries about regulations on disability	29
Driving tests	18
Places reserved for people with disabilities in public sector examinations	13
Adaptations to jobs and curriculae	8
Adaptation of vehicles for persons with disabilities	8

The Specialist Permanent Bureau receives numerous complaints concerning public administrations. This section particularly highlights:

- The need to include the gender perspective and respect for preferences in the provision of social services, specifically with regard to a complaint in relation to a girl of eight with a disability who requires help from carers for her personal hygiene and found that one of her carers was a male, this seriously violates her right to privacy.
- The persistent errors in defining people with disabilities and people in a situation of dependency *“...errors persist which need to be rectified in some reports issued by public bodies referring to persons with disabilities, , in failing to take into account Act 51/2003, on equality of opportunities, non-discrimination and universal accessibility for persons with disabilities and the UN Convention”.*
- The recognition of the degree of disability of persons with limited intelligence and the need to adapt the scale for establishing the degree to the social model *“(…) to prevent situations of discrimination”* the comment from the Specialist Permanent Bureau on this was *“it would be appropriate that in the tasks undertaken to measure the new degrees of disability that given the difficulties in integration encountered by people with limited intelligence, the minimum awarded should be equal to or above 33%.”*
- The failure to adapt civil service entrance tests for people with intellectual disabilities.

- The need for the impact report on equal opportunities, non-discrimination and universal accessibility to be mandatory for all regulations.

B. ANNUAL REPORT 2010 OF THE OMBUDSMAN

- The National Ombudsman's Report does not contain any indicator to enable quantitative information on complaints from persons with disabilities or which affect persons with disabilities.
- The Report, which includes the majority of issues in relation to disability in the section on *Health and Social Policy*, refers to this sector of Public Administration activity as having received the greatest number of complaints, from individuals and groups, during 2010 with 8,299 complaints.
- The section of the Report on statistical data in relation to *Equal Treatment* has no indicator with regard to disability.
- It can be concluded that conditions of accessibility due to the lack of or failure to comply with regulation is the source of many disputes, particularly concerning housing, transport, employment, education and information.
- It highlights reference to the lack of regulation on a regional level of the legal system on infractions and sanctions in the area of equal opportunities, non-discrimination and universal accessibility of people with disabilities, to put to Parliament for debate.

The inclusion of this point in the official Ombudsman's Report is in response to a complaint from CERMI, condemning the inactivity of almost all the Regional Communities (with the exception of Navarre) who more than three years since the Act on infractions and penalties was passed, have still failed to establish a specific legal system corresponding to autonomous territory.

Proceedings relating to persons with disabilities can be highlighted in the following areas in particular:

Initiated ex officio:

- With regard to Prison Administration before the General Secretary of Penal Institutions on the news about abuse in the psychiatric prison unit of Alicante.
- In relation to the creation of a reservation quota for people with disabilities with regard to the adjudication of new pharmacy offices, before the different regional administrations.

- With regard to the need to adapt social housing to the needs of persons with reduced mobility, the deaf and blind, before the Community of Madrid.

Other types of proceedings in relation to:

- In Madrid's Barajas Airport, the failure to comply with the provisions of Act 27/2007 of 23 October, which recognises Spanish sign languages and regulates means of oral communication support for persons who are deaf, have impaired hearing and the deafblind.
- The difficulties of baccalaureate students with curricular adaptations to sit university entrance tests in line with the curricular adaptation that they have followed.
- Mental health:
 - Admitting and keeping people in psychiatric centres when in reality they need a different sort of care structure.
 - The need to regulate child and adolescent psychiatry.
- Social action and Social Security Administration:
 - With regard to the adaptation of the assessment criteria for the degree of disability to international functioning, disability and health classification (CIF).
 - In relation to the high number of complaints on the accessibility of public transport.
- Online contracting services. Complaints with regard to the accessibility of communications and information technology (CIT) in relation to online contracting, for example, websites for the purchase of cinema tickets, which do not offer any information on the accessibility of the premises and therefore are of no use to people who use wheelchairs who can only get their tickets from the ticket office.
- Television. A complaint put forward by CERMI against the setting up of the DTT and the violation of the rights of people with disabilities.
- Urban transport. Disagreement of the Ombudsman with the change of criteria with regard to the recommendation accepted by the General Directorate of Civil Aviation to arbitrate a system of grants towards assistance for persons with disabilities.
- Access to public sector employment. There are shortcomings in the selection bodies for adapting tests to the needs of people with disabilities.
- Electoral system. The failure to establish basic conditions of accessibility and non-discrimination, amongst others, in the devices and services for participation in public affairs, including electoral processes.

C. ANNUAL REPORTS 2010 OF THE OMBUDSMEN FOR THE REGIONS

Note: The information in this section has been taken from the text of the Reports presented by these institutions on 10 May 2011.

Andalusia: www.defensor-and.es

→ Complaints with regard to public sector staff:

- Persons with disabilities having been denied the adaptations of time and means requested for exercises in selection tests. (p. 90).
- Adaptation or relocation of the job on the grounds of disability. (p. 93).

→ Complaints with regard to town planning, housing and transport:

- The elimination of architectural barriers and barriers in infrastructures. The elimination of urban planning barriers on public roads and places. (p. 96).
 - Complaint 09/5078. A person in a wheelchair, with a degree of disability of 69% who asked for obstructions to be removed from the public road.
 - Complaint 10/1397. The presence of a ramp with a slope of more than 20%, impossible to use in a Health Centre.
 - Complaint 10/4402. Mobility problems of a person with a disability due to the height of the pavements.
 - Complaint 09/1208. A complaint about badly parked vehicles taking up pedestrian areas, and about bar and restaurant terrace furniture, which makes walking on the pavement difficult for people with disabilities.
 - Complaint 10/707. With regard to the increasing use of very high tables and stools, which are inaccessible for people with reduced mobility and wheelchair users, in hotel and catering establishments.
- Disability and housing:
 - Complaint 08/2270. The ramp made to access the social housing block from EMMVIES (the municipal company of housing and car parks of Estepona) did not comply with Decree 72/1992 on Accessibility and Elimination of Barriers in Architecture, Town Planning and Transport of Andalusia.
- Disability and transport, with regard to parking spaces reserved for persons with disabilities:

- Complaint 09/4258. Reserved parking places for persons with disabilities are not appropriately signed.
 - Complaint 10/1551. A complaint against a fine received for parking in a space reserved for persons with disabilities when the car had a photocopy of the original reserved parking badge.
- Education:
 - Complaint 09/2421. Concerning a school classed as a centre for social integration for boys and girls with disabilities, lacked the necessary infrastructures, such as not having a lift.

Aragon: www.eljusticiadearagon.com

→ Persons with Disabilities (p. 1494): All complaints relating to any type of disability, physical, mental or sensory were processed within the bulk of inquiries concerning people with any type of disability.

During 2010, thirty one cases were dealt with, referring to the types of disability identified. In terms of the number of Resolutions, four formal Suggestions were made and seven Reminders of Duties under the Law, although, on occasion, the information was subsequently received at the required time.

Below this section is a diverse set of issues which were handled and which can be resumed as follows:

- Disagreement with the score achieved in the degree of physical or sensory disability, cases: 835/2010, 971/2010, 1047/2010, 1254/2010 and 1262/2010.
- Legal declaration of incapacity, cases: 324/2010, 506/2010, 706/2010, 813/2010, 819/2010, 908/2010 and 1415/2010.
- Housing, the lack of a lift, case: 1544/2009.
- Withdrawal of subsidies, cases: 1357/2010, 1620/2010 and 1102/2010.

Specifically:

About the inactivity on the part of the Council for the Promotion of Accessibility and Elimination of Barriers:

- Town planning. Accessibility and elimination of architectural barriers. Complaint about shortcomings in accessibility and parking. Case 225/2010. (p. 301).
- Town planning. Public works and services. Inaccessibility to the municipal public library, in an old building which had not been adapted. Case 690/2010. (p. 321).
- Town planning. Teaching equipment. Accessibility and reserved parking for persons with disabilities. Case 544/2010. (p. 332).

- Town planning. Municipal works. Complaint about the difficult accessibility to housing caused by municipal paving work with steps rather than a ramp. Legitimacy of revising the adaptation of the works project to the standard on accessibility promotion and the elimination of barriers. Case 699/2010. (p. 339).
- Town planning. Municipal inactivity in relation to the request for access for a person with a disability. Case 598/2010. (p. 393).

Education:

- Assessment of permanent invalidity for admission to nurseries. Case 749/2009. (p. 1030).
- Recommendation to the Council for Education, Culture and Sport of the General Delegation of Aragon (DGA). Educational offer for GDD. Case 1556/2009. (p. 1053).
- Recommendation to the Council for Education , Culture and Sport of the DGA. Architectural barriers in the Municipal School of Music. Case 420/2010. (p. 1145).

Culture and tourism:

- Suggestion delivered to the Provincial Deputation of Saragossa that they should stop contracting comical bull-fighting shows involving the participation of people with achondroplasia and who are made fun of precisely because of this condition. The suggestion was not accepted. Case 1338/2010. (p. 1241).

Health:

- A request for therapy for early care outside term time. Case 1778/2008. (p. 1268).
- A request for early care outside term time for their child who attends a special school. Case 623/2009. (p. 1274).
- Mental health care funding for a minor when they become of age. Case 245/2010. (p. 1337).

Social well-being:

- The need for the assessment grade to be reviewed by a different assessor. Case 893/2010. (p. 1410).
- Delay in the departments processing deadline. Case 1655/2010. (p. 1439).

Interior:

- A citizen reported the lack of sufficient parking spaces for persons with disabilities in the localities of Illueca and Brea de Aragón. Case 217/2010. (p. 1636).

Catalonia: www.sindic.cat

The distribution, according to persons with disability, of the proceedings started during 2010 is:

Complaints	411
Ex officio actions	4
Inquiries	683
TOTAL	1,098

The actions initiated concerning persons with disabilities can be divided into the areas below:

Adaptation, mobility and accessibility	8.11%
Domiciliary care	0.73%
Occupational centres and special work centres	1.64%
Recognition of degrees of disability	16.94%
Mental health in the area of social welfare	1.37%
Residential and day centre services	5.83%
Subsidies and grants	62.75%
Other	2.64%
TOTAL	100%

Basque country: www.ararteko.net

→ Out of the complaints received in 2010, a total of 1,312. 29 were submitted by people with disabilities (2.21%):

Predominantly:

- Urban accessibility.
- Education.

- Civil service.
- Finance.
- Interior.
- Health.
- Social Services.
- Housing.

CONCLUSIONS

A large number of complaints concerning persons with disabilities are shown in the annual reports for 2010 from the different Regional Ombudsmen.

There were 411 complaints referring to people with disabilities from Catalonia, 29 from the Basque Country (2.21% of the total complaints), 31 from Aragon and the remaining 10 from Andalusia. Added to this are the numerous cases handled by the National Ombudsman.

Out of the 411 complaints lodged in Catalonia, 8% referred to adaptation, mobility and accessibility. This was also an area for complaint in other Autonomous Regions.

There were a great number of complaints regarding the recognition of degree of disability, 16% of the complaints in Catalonia and 5% of the complaints in Aragon concerning persons with disabilities were in reference to this.

It can be concluded that in general the problems which give rise to most complaints are: the failure to update the scales to determine degree of disability, education and access to public sector employment and the persistent problems of accessibility, especially in transport infrastructures, social housing and other public buildings.

VI. SITUATIONS OF DISCRIMINATION AGAINST PERSONS WITH ACHONDROPLASIA IN SPAIN²³. BY GLORIA ÁLVAREZ, DOCTOR IN LAW.

²³ This article is an extract from the Report *“Las situaciones de discriminación de las personas con Acondroplasia en España. Informe Jurídico”*. (Situations of discrimination towards people with Achondroplasia in Spain) Gloria Esperanza Álvarez Ramírez. CERMI, Fundación Derecho y Discapacidad, Ediciones Cinca, Madrid, 2010.

The Report on Human Rights and Disability Spain has monographic paragraphs which present and clarify a definite or specific human rights and disability issue. On this occasion, the Report Spain 2010, includes a chapter devoted to the rights of people with achondroplasia, as this is a particularly vulnerable group in terms of their social inclusion.

It can be concluded, therefore, that there is a general lack of awareness about what achondroplasia means. Few people realise that this is the most common form of dwarfism and that, in addition to the medical complications of the condition, a person with achondroplasia has added problems associated with their unique features, which are perceived in a pejorative way by society and this has negative consequences for them in practically every facet of their lives.

The research study *Situations of discrimination against persons with achondroplasia in Spain*, promoted by CERMI, with the support of the Royal Board on Disability, was undertaken to reflect the reality for this section of the population, by the identification and analysis of the discriminatory practices and attitudes they suffer in various areas of their lives, such as: education, health, employment, and their image as individuals and as a group.

The findings of the document reveal practices and behaviours which contravene the International Convention on the Rights of Persons with Disabilities, and expose a society which continues to exclude and reject people with dwarfism.

The main objective of the Report is to devise and put into practice efficient strategies and actions which prevent and combat discrimination against people with achondroplasia.

Achondroplasia

People with achondroplasia, which is a series of conditions which result in a notably shorter stature, are generally referred to as dwarves. These conditions are grouped under the name dwarfism. Achondroplasia is the most common form of dwarfism, and forms part of the group of disorders characterized by abnormal skeletal growth, a chromosomal condition which hinders the development of cartilage in conjunction with the long bones, resulting in certain limbs growing at a different rate to the body – very short arms and legs in relation to the trunk – and other specific anatomical characteristics such as, amongst others, short stature, hands in trident configuration, a depressed nose bridge, prominent forehead, and short fingers.

Population with achondroplasia

Although it is estimated that there are around 250,000 people with achondroplasia²⁴, that the average number in Europe is 4.5/100,000²⁵, it is not known how many people have this disorder in Spain, possibly between 2,000 and 4,000, but this is just an estimate as there are no official statistics yet to provide precise data.

The National Database for Persons with Disabilities²⁶, updated in December 2006²⁷, estimated that there were a total of 1,368 people with achondroplasia in Spain. However, it should be taken into account that the information on the database was taken from official assessment records on the recognition of degree of disability. The database is not a census per se, therefore, its purpose is to offer a general statistical report on the population with disabilities, and given that it only includes people who have voluntarily requested the competent administrative bodies throughout Spain to assess their degree of disability, it leaves out an unknown number of people with achondroplasia.

This lack of real and exact data on the number of people with constitutional bone dwarfism makes it difficult to know anything about this group of people's real situation in society, their educational and professional status, their work situation or the conditions of their lives in general. This lack of data, however, is a sign that achondroplasia correlates with exclusion, corroborating the fact that people with disabilities have poorer levels of education, healthcare, and housing than those of the general population.

Recommendation:

Data need to be gathered and specific statistics drawn for people with achondroplasia to identify and contextualise their specific needs, to distinguish them from those of people with other types of disabilities and manage them in a different way.

²⁴ HORTON, W.A., HALL, J.G., & HECHT, J.T.: *Achondroplasia*. Lancet, 370, pp.162-172. 2007.

²⁵ The information is included in: Orphanet periodic reports - Prevalencia de *las enfermedades raras: Datos bibliográficos*. (Prevalence of rare diseases: bibliographical data) (May 2010). Available at:

[http://www.orpha.net/orphacom/cahiers/docs/ES/Prevalencia de las enfermedades raras por orden alfabetico.pdf](http://www.orpha.net/orphacom/cahiers/docs/ES/Prevalencia_de_las_enfermedades_raras_por_orden_alfabetico.pdf). Orphanet is a database for information on rare diseases and orphan drugs. It works from a consortium of European partners, funded by the European Commission for data collection from European countries. Spain is an active participator, along with others, via the Biomedical Network Research Centre for Rare Diseases – CIBERER-.

²⁶ GONZÁLEZ DOMÍNGUEZ, M. (Coord.): *Base de Datos Estatal de Personas con Discapacidad* (State database for Persons with Disabilities) The Institute for Migration and Social Services. Ministry of Employment and Social Affairs, Madrid, 2000.

²⁷ The version updated in 2006 of the State Database on Persons with Disabilities can be viewed on the Disability Information Service (SID) website: <http://sid.usal.es/>



Vulnerability in terms of rights

Discrimination is a complicated phenomenon which results in exclusion and a lack of social cohesion. It is usually found on at least two levels which are interconnected. Occasionally it is encountered associated with equality or inequality in the standards of living and wellbeing of people in different areas (education, health, work...), and often it is revealed in preconceived sociocultural ideas, stereotypes and stigma, which do not have a direct connection with individual living standards.

People with achondroplasia can be vulnerable on several levels; principally society's stereotypical and stigmatizing cultural view of dwarfism; they are considered not only to have the same or similar problems as other people with disabilities, but their identity is devalued and this leads to their being denied the dignity of being accepted as fully-fledged citizens.

Society has been only too willing to attach labels to people of short stature who are often denied the opportunity of social interaction, highlighting how vulnerable the identity of the individual is in comparison to others. For many people with achondroplasia the effect of their physical condition on their body image, which does not match the standards of beauty created and circulated by the media, means they often lack self-esteem and this makes them particularly vulnerable, especially if this is combined with a lack of education, social isolation, depression and mobility difficulties.

Added to direct discrimination based on mockery, particularly humiliating for people in this situation, are other types of discrimination in the different areas of their lives which affect their personal development and their participation and inclusion in society.

In terms of image and personal dignity

Recent studies have revealed that people with any form of dwarfism feel that they are treated in a humiliating way and are considered second-class citizens. At the moment, people with achondroplasia bear a stigma that goes beyond their short stature, as they are still connected with myths and legends which are not associated with other types of physical differences. It is this connection between dwarfism and fictitious images with clearly comical inferences, which has propagated and maintained mistaken ideas in society about the skills and limitations of people with dwarfism. These symbolic representations constitute the

greatest discrimination they suffer, they find them difficult to cope with and truly humiliating and degrading²⁸.

Indeed, research on the phenomenon of humiliation²⁹, highlights it as a relatively new concept which has arisen as a consequence of the recognition of the intrinsic dignity and the equal and inalienable rights of every human being, regardless of their condition. Nobody doubts that the principle of equal dignity and rights, at least theoretically, has been a turning point in terms of scale of human value, but it is quite a different thing whether any real change has occurred in terms of social progress and improved quality of life. In this regard, although this new idea of the equality, dignity and value of every human being has penetrated the consciousness of many creating a new context, people with achondroplasia continue to feel that they are treated not only as physically different, but as people of lesser value. Achondroplasia is seen as a peculiarity which leads to exclusion, people feel undervalued in their identity as human beings and this limits their possibilities of inclusion in social groups and makes it difficult for them to complete life projects on an equal basis with other members of society.

Recommendations

- It is important to drive campaigns that project a change of attitude towards people with dwarfism, to disassociate the physical condition from outdated and misguided sociocultural connotations.
- As dignity of person comes under constitutional law, it must steer the trend towards the effective intervention of the public authorities to protect people with achondroplasia.

In terms of their image and dignity as a group

So-called “curiosity shows” such as comic bullfights or comic erotic shows are found by many people with achondroplasia to be amongst the few job opportunities open to them in society. The great majority of people with achondroplasia oppose these sorts of shows as they consider them to be degrading and to be perpetuating a reviled and distorted image of dwarfism. The defenders of this sort of entertainment argue that criticism from its detractors is due to a complex in those who have not managed to accept their physical condition, or that

²⁸ A detailed study of this aspect can be found in: FERNÁNDEZ ARREGUI, S.: *El estigma social del enanismo óseo. Consecuencias y estrategias de afrontamiento*. The social stigma of constitutional bone dwarfism. Consequences and coping strategies. Thesis submitted before the Organizations and Social Psychology Department. UNED, 2009.

²⁹ See: FERNÁNDEZ ARREGUI, S.: “Reflexiones sobre el significado social de la humillación” (Reflections on the social meaning of humiliation) in *Psicología Política* nº37, 2008, pp. 29-46, and LINDER, E.: *Making enemies: humiliation and international conflict*. Westport, CT. Praeger Security International, 2006.

it is simply down to “political correctness” - they feel that they are counteracting euphemisms.

Lying at the centre of the controversy, although with opposing versions, is the defence of dignity. For some dignity means being in employment, being free to choose a job, respect for their privacy and a sufficient standard of living. For others, eradicating any inhuman and degrading treatment is the greater consideration which relates to respect for the dignity of the social image of people with constitutional bone dwarfism and which does not limit the right to freedom of the individual. And it is the latter version which applies in opposing these sorts of spectacles. Dwarfism is a condition shared with other people who form a specific social group about which society continues to have preconceived ideas, therefore shows of this type only serve to perpetuate prejudice and stereotypes which stigmatise people with dwarfism and thus constitute an affront to the social image of this group of human beings.

Recommendations:

- It is important that no Public Administration promote, contract, fund or grant public spaces for these shows or activities to take place which lead to discriminatory treatment and which constitute an affront to the dignity of human beings.
- Public Administrations must adopt the appropriate measures including amending or repealing their legislation, and eradicate discriminatory and humiliating practices.

In terms of access to employment and labour relations

It should be noted that although in recent years people with disabilities have been the focus of increased legislation and public action specifically in the area of employment, this remains rare and infrequent due, amongst other reasons, to the fact that action in the area of employment has not taken into consideration each disability’s particular features in terms of how it can adapt to the work place.

These particular features, in the case of achondroplasia, are associated with stereotypes of a disability which causes amusement and mockery along with the clear preference for tall people in the workplace. Height acts as a large cloud which hangs over any activity that a person with achondroplasia does or wants to do. A false correlation is drawn between short stature and the ability of a person to undertake a particular activity. Complaints from people are common that they manage to pass the human resources selection processes where they do not have to be physically present only to be rejected when their disability is noticed at the job interview stage. Their height is still a constraint to their being offered a job,

despite the other factors such as their level of education, experience, skills, leadership qualities, being able to work in a team, etc. being similar to other candidates without achondroplasia. The direct consequence of this stigmatization is evident discrimination at work, which means that the person is not only left out of the work context but they are also excluded from normality in general.

On the other hand, while short stature can mean exclusion from the workplace, there are jobs for which a specific disability, dwarfism, is an essential requirement, as in the abovementioned comic bullfights, which are covered in article 15 of the Convenio Colectivo Nacional Taurino (National Collective Agreement on Bullfighting).

In addition to the considerations with regard to the personal and collective dignity mentioned in the previous section, this sort of work does not take into account the enormous medical complications of the musculoskeletal system being affected by the condition, therefore being charged at by a significantly larger animal has increased risks for a person with achondroplasia. Clearly, therefore, the Occupational Risk Prevention Act is being infringed. Article 25 of the Act covers the guidelines to be met by all employers to ensure the protection of those workers who are particularly susceptible to occupational risk, due to their particular personal conditions or known biological circumstances, including those who have a recognised physical, mental or sensory disability. The lack of any risk assessments in the bullfighting sector means that no preventive measures are in place to ensure that the physical integrity of people with achondroplasia is protected. Obviously, the requirement not to employ people with recognised personal characteristics, biological circumstances or physical, mental or sensory disabilities, in jobs where they may be at risk or when they will clearly be in conditions or in temporary situations for which they do not meet the psychophysical requirements, is not applied to comic bullfighting due to the very nature of the spectacle.

The situation where there is no or hardly any adaptation of the workplace applies to all sectors, making it obvious that this goes beyond being merely a question of finances, as the removal of barriers and the provision of personal protection, in addition to the cost involved, have to be accompanied by a procedure for adapting the workplace to the disability and the needs of the worker. This procedure is subject to the inspection of the appropriate Regional Department of Employment, who are often not aware of the particular adaptations which are needed by people with achondroplasia or of how urgently they are needed, not only for the work to be carried out correctly but also for the wellbeing of the worker him or herself.

Recommendations:

- A retraining and career entry plan needs to be put in place for people with achondroplasia who work in these shows so that they can gain dignified employment of quality.
- The Public Administration's power to impose sanctions in relation to labour matters needs to apply across the country respecting the competent bodies of the different regions as well.
- The effective application of the system of sanctions should extend to the areas covered under Act 49/2007, of 26 December which establishes a system of sanctions in the area of equal opportunities, non-discrimination and universal accessibility for persons with disabilities.

In the area of education

Discriminatory attitudes towards people with achondroplasia continue in the context of education as there is a lack of information and little or no experience in how to manage them.

Unlike other types of disability, there has been a long tradition of considering that the learning problems of students with achondroplasia have nothing to do with the condition per se. Whilst biological, sensory, cognitive or behavioural difficulties are considered to influence educational inclusion, with achondroplasia there is a belief that if the accessibility problems of the student have been dealt with they should not have any other difficulties in their education, as people with this condition generally do not have intellectual problems. Consequently, the factors relating to the student's environment, such as their family and the school itself, are hardly taken into consideration. The interactive, individual and environmental approach in the area of education which is applied for other disabilities, is seriously lacking for this disability, because although difficulties have been overcome with other disabilities – some more than others – and a degree of inclusion achieved, there remains a stigmatizing attitude towards achondroplasia. The field of education tends to overlook or trivialize the pejorative connotations which are made in connection with these students' short stature, in the belief that these are held by only a minority of the educational community – a few of their classmates. However the perception of people with achondroplasia that they are treated as people who are physically different, and also of lower status, has a significant effect not only on their academic performance but on their interpersonal relationships and this can lead to isolation and complete exclusion. The educational community's little or no knowledge of what achondroplasia means, and the way it manages it, has stood in the way of organisational strategies towards dealing with the condition in an effective way as part of diversity. Generally students with achondroplasia tend to be managed according to their

height and not their age, which leads to inappropriate behaviour from others and generates fewer expectations of the students themselves³⁰.

It is equally important to highlight that amongst the diverse elements which make up our education system, the aspirations of people with achondroplasia are almost always frustrated in terms of vocational training, which is understood to be learning aimed at integration, re-integration and updating skills to adapt to the workplace, as the vocational training system prepares students for work in occupations or professions which essentially require manual tasks – apart from some areas such as information technology and communications. It is difficult for people with achondroplasia to undertake this sort of work due to their anatomical characteristics. In this area the integrated approach of the education system is failing to reach these people as they are not being adequately prepared to acquire the skills they need for their professional development.

Recommendations:

- Knowledge of disability in general and achondroplasia in particular, must extend to the entire educational community, its function being to prepare people with disabilities for life and work in a plural society.
- Vocational training should take into account not only the psychophysical conditions of people with achondroplasia but also their real possibilities of entering the labour market; therefore it is essential to broaden the skills offered by the Vocational Training System to enable these people to find job openings of quality.

³⁰ On the stigma of achondroplasia in the school context, see: FERNÁNDEZ ARREGUI, S.: *La estigmatización social en la acondroplasia*. (The social stigmatisation of achondroplasia) A report prepared for the Fundación ALPE, Acondroplasia. This can be viewed at: http://www.fundacionalpe.org/quienes_somos.php

In the area of health

The obstacles encountered by people with achondroplasia and their families in the area of health generally stem from a lack of awareness of the disease, its consequences and how to manage it. Although there are a few medical professionals who include the area of achondroplasia in their lines of research, in general, medical cover of this disability is almost always inadequate. It is clear from the complaints received that patients and families are not receiving sufficient counselling on the physical limitations or the medical problems associated with achondroplasia. Any care they do receive depends on the criteria of healthcare professionals as there are hardly any uniform medical parameters which can offer specific care and assessment of achondroplasia. This situation is all the more evident during childhood, as, due to the territorial fragmentation, not all the autonomous regions are the same in terms of the Early Care services they offer which means that children with achondroplasia are assessed in very different ways in each Autonomous Community. Although in several Autonomous Communities, Early Care involves a social approach to the development of the child looking at psychosocial aspects, in many the approach remains medical and rehabilitative, added to an almost general ignorance about achondroplasia.

People with achondroplasia say that they feel discriminated against in the area of health, as the low prevalence of achondroplasia means it is not comparable to other diseases and there is a consequent lack of specialists, making it necessary for people and their families to go through an interminable and difficult process to be seen in the Growth Disorder and External Fixation unit of the Institut Català de Traumatologia i Medicina de l'Esport (ICATME), located in the USP Instituto Universitario Dexeus, in Barcelona, the only department for the diagnosis and treatment for achondroplasia and, according to the different Associations and Foundations who work with these people, the national benchmark for care of the disease³¹.

³¹ For a detailed outline of intervention in the area of health for people with achondroplasia, see: ROCAMORA PÉREZ, P.: *La Atención Sanitaria a la Persona con Acondroplasia: Análisis de la Situación Actual en España.* (Health care for People with Achondroplasia: Analysis of the current situation in Spain. End of Masters Degree. University of Almería, 2009. Summary of the Doctoral Thesis at <http://www.fundacionalpe.org/subidas/RESUMEN%20DEL%20PROYECTO.pdf>

Recommendations:

- The constitutional principle of equality in the area of health, via planning and co-ordination to enable agreement between the different regional administrations.
- All Administrations should be freeing up their legal, technical and financial resources, to cover all of Spain, on the premise of equal coverage for all citizens

In the official recognition of the situation of disability

The current tool used to assess disability does not guarantee all people with achondroplasia a specific degree of disability, as there are several difficulties in the way the assessment is made due to the inadequacies of the scale, its outdated application and the lack of consensus on criteria.

The scale is inadequate, as a person with achondroplasia is assessed uniquely and exclusively according to their height leaving to one side any clinical manifestations which may be attributed to changes in other organs and systems, other than the musculoskeletal system, which may be affected by the main pathology. The scale is outdated because, although each person is a unique case with a different clinical evolution, it is the physical characteristics which sooner or later result in a situation of disability. However, the strictly medical criterion which is followed in applying the scale does not allow any perception of the stigma caused by achondroplasia's unique physical features which have a direct impact on the wellbeing and the social integration of the individuals affected and this is not properly considered when the disability is assessed. And finally, there is a lack of criteria in its application, as benefits and services are distributed unequally because of the lack of uniform assessment criteria throughout Spain.

Recommendations:

- It is essential that the instrument currently used to assess disability abandon obsolete medical models which are principally based on the scientific aspect, and adopt a social paradigm of understanding disability, specifically including the psychological impact of a diagnosis of achondroplasia.
- The assessment scale for disability must adopt, not only formally but also conceptually, the criteria of the International Convention on the Rights of People with Disability.
- It is necessary to combine the criteria on the assessment of the disability of people with achondroplasia to realise the equality principle which is enshrined in the Constitution, preventing inequalities and different treatment according to the area in which the person lives.

Conclusions and proposals

Discriminatory acts against people with achondroplasia occur in almost all areas of their lives, as does the perception of these acts. However, legal action is hardly ever taken against this discrimination, due, amongst other factors, to the general lack of knowledge about the legal instruments available to combat it, or a feeling of powerlessness wasting time and even money on fruitless action the results of which, if any, tend to take a considerable amount of time and thus render the initial claim ineffective, or if successful, the penalties imposed are insignificant.

Those who think this are indeed right. Allegations, complaints and claims are usually not taken seriously, as there is still little social awareness of people with achondroplasia, who do not all receive the protection afforded to people with disabilities as they do not come under this bureaucratic title; they have no real body in place to monitor and demand the intervention of the state. In short, the process of integration is not being managed effectively for people with achondroplasia.

Nevertheless, possibilities for action are emerging under increasing antidiscriminatory legislation, principally with the dawning awareness of civil society which can operate as a swift-acting body sympathetic to the problems of people with achondroplasia, compared to the distant and difficult-to-access public authorities, who are bound up in the formality of their procedures and who are slow to apply the necessary solutions.

We consider that the strategy that should govern the fight against discrimination towards people with achondroplasia should consist of a mixed formula involving increased public action to enable more material, financial and personal resources, along with a renewed concept of disability where social participation should be ongoing rather than merely temporary.

There are three aspects to highlight which in our opinion are relevant towards achieving truly antidiscriminatory law: improved tools for discrimination awareness; actually constituting a body on a regional scale to combat discrimination on the grounds of disability; and clarification by the law courts on discrimination on the grounds of disability by interpreting current regulation in line with the International Convention on the Rights of People with Disabilities and internal regulation in this regard.

Proposals:

1. The need for data on discrimination

In order to be aware of and explain the living conditions of people with achondroplasia, statistical data is needed to assess the extent of the discrimination and adopt measures to promote equality, to ensure that antidiscriminatory devices are adequate, and to enable the involvement of all the social operators (Public Administration, legal operators, Third Sector...) in the analysis, interpretation and monitoring of the data.

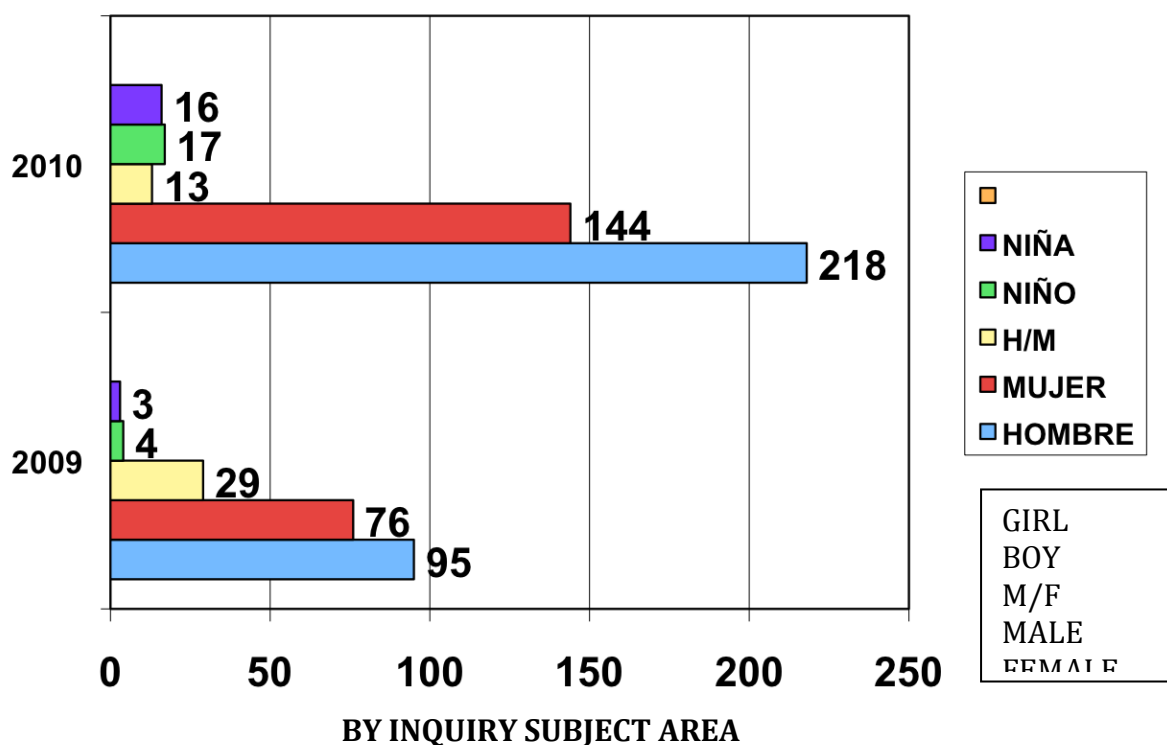
2. Implement Administrative Penalty Law

To enable efficient legal protection against discrimination on the grounds of achondroplasia, in addition to the generic regulation, the system for infractions and sanctions needs to be developed through the Autonomous Regions, by creating improved bodies to combat discrimination.

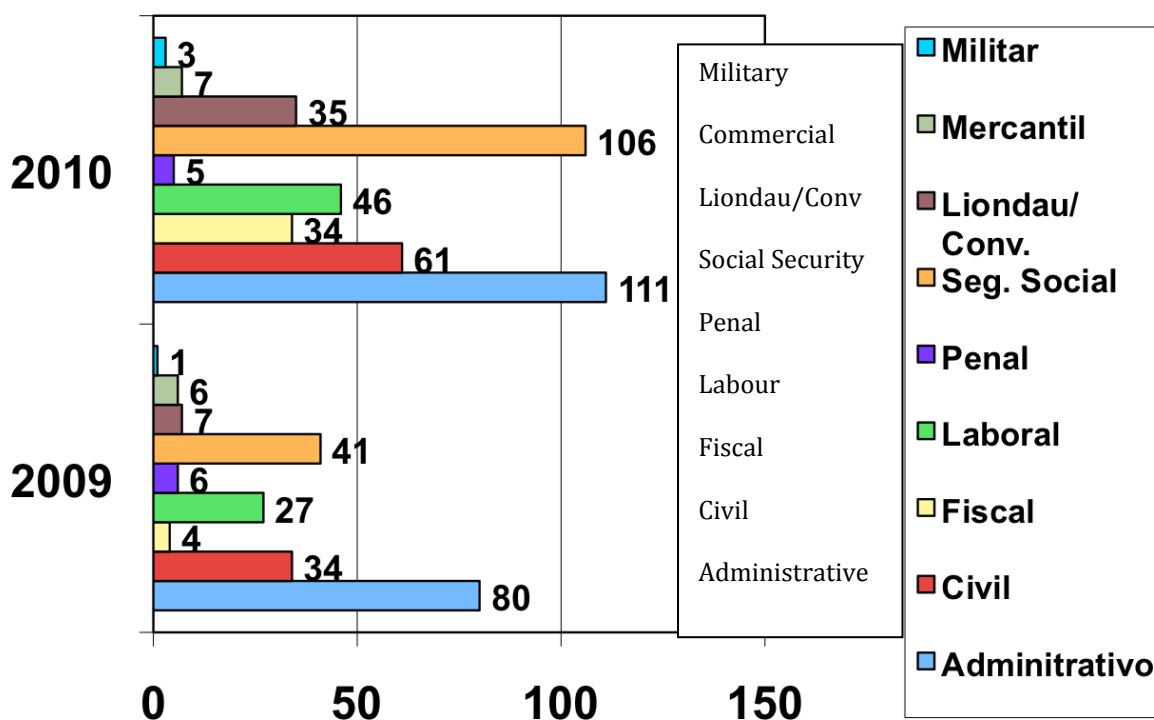
3. Promote legal protection

Structural change of the legal system is essential to guarantee protection against discriminatory practice so that it is based on a truly differentiated society. To that end current regulation must be interpreted in line with the International Convention on the Rights of Persons with Disabilities, to enable us, on the one hand to fill the gaps in our legal system, and on the other, ensure the rights which are enshrined in the Treaty itself.

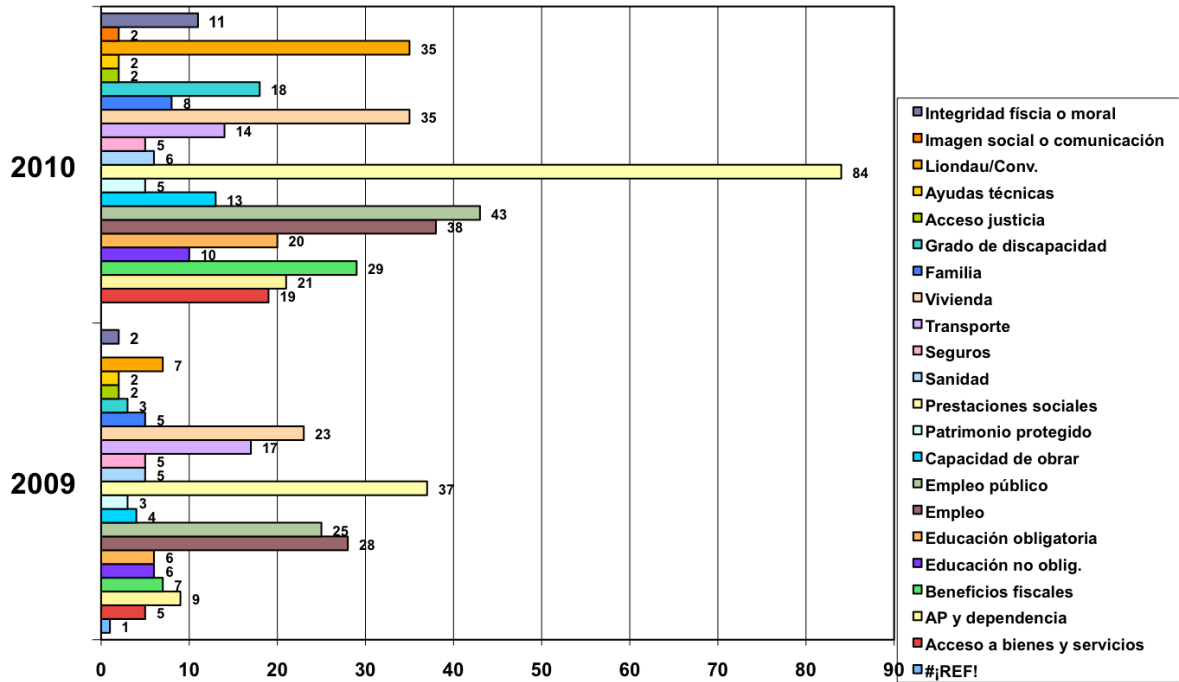
**INQUIRY COMPARATIVE TABLES CERMI 2009 - 2010
BY GENDER OF THE PERSON MAKING THE INQUIRY**



BY INQUIRY SUBJECT AREA



BY INQUIRY SUBJECT AREA



- Physical or moral integrity
- Social or media image
- Liondau/Convention
- Technical help
- Access to justice
- Degree of disability
- Family
- Housing
- Transport
- Insurance
- Health
- Social benefits
- Protected property
- Capacity to act
- Public sector employment
- Employment
- Mandatory Education
- Non-mandatory Education
- Tax benefits
- AP and dependency
- Access to Goods and Services

BY AUTONOMOUS REGION

AUTONOMOUS REGION	Number	Percentage
Andalusia	40	8.565
Aragon	1	0.214
Asturias	8	1.713
Balearic Islands	4	0.857
Canary Islands	17	3.640
Cantabria	7	1.499
Castilla- La Mancha	20	4.283
Castilla y León	31	6.638
Catalonia	25	5.353
Ceuta	1	0.214
Extremadura	8	1.713
Galicia	16	3.426
La Rioja	0	0.000
Madrid	121	25.910
Melilla	2	0.428
Murcia	5	1.071
Navarre	1	0.214
Basque Country	11	2.355
Valencian Com.	24	5.139
CERMI*	123	26.338
TOTAL	467	100.000

* This number corresponds to the inquiries where a region was not identified, either because the person using the service did not supply the information, or because it is a CERMI initiative affecting the whole of Spain.