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| **Fileno.**  2018 - 3536  **Docno.**  593800  **Date**  2018-07-09 |

Contribution to the next Annual Thematic study on the rights of persons with disabilities

**1.** Danish disability policy rests on the rights of the UN Convention on the Rights for Persons with Disabilities (ratified in June 2009) and on four fundamental principles: The principle of equal opportunities, the principle of solidarity, the principle of compensation and the principle of sector accountability.

The sector accountability principle require all public authorities to be responsible for providing and ensuring the accessibility of goods and services to people (including women and children) with disabilities. It also means that all public authorities have to take disability issues into consideration when developing policies in their respective areas of responsibility. This includes policies concerning habilitation and rehabilitation.

Services are provided to compensate the needs as a result of reduced physical or mental function and to improve the individual’s social and personal level of function. The potential development of the individual is described in each sector.

Danish social legislation contains a large number of provisions aimed at various ways to ensure the habilitation and rehabilitation of people with congenital and/or acquired disability. These services complement rehabilitation services from other sector areas.

**1a.** There is no official definition of disability in Denmark, but the general definition of disability is expressed through the recognition of a person’s reduced psychical and/or mental function and the person’s need for compensation measures in order to access the surrounding society.

The assistance under the Danish social legislation consists of rehabilitation and/or maintenance of physical, mental, cognitive and social skills and of support in the form of aids, cover of expenses, personal and practical assistance etc. It aims to compensate for any functional impairment. The objective is to give the citizen the best possible functional capacity – in terms of movement and activity, cognition, emotion and social life. All these forms of help constitute voluntary services for the citizen, and he or she has the possibility of launching a complaint regarding both the nature and scope of the assistance offered.

**1b.** The Ministry for Children and Social Affairs has the overall responsibility for coordinating policies regarding disabled people. But every ministry and public authority share the responsibility of developing disability policies and providing the necessary services in their respective areas of expertise. For example, the Ministry of Employment is responsible for the policies regarding disabled people’s participation in the labour market.

The municipalities are responsible for planning and providing a broad range of social services, including care for people with disabilities and the elderly, day-care services as well as rehabilitation and activation of unemployed people.

The task of promoting, protecting and monitoring the CRPD are placed with the Danish Institute for Human Rights, which is accredited as a National Human Rights Institution (NHRI).

Furthermore the Danish Parliament has set up The Danish Disability Council. The council consists of an even number of representatives from Disabled Person’s Organizations and authorities. The council has a dual role by both advising public authorities, including the Danish Parliament and monitoring the application of regulations, legislation and practice on matters related to disability.

Finally, the Danish Parliament has elected an Ombudsman to monitor the state and municipal authorities as well as other public authorities. The Ombudsman can investigate decisions made by the authorities and their treatment of citizens of all ages and in all cases and areas – including disability. The Ombudsman may also take up cases on his own initiative and carry out investigations on the case work of the different authorities. Thus, the Danish Institute of Human Rights, the Danish Disability Council and the Danish Parliamentary Ombudsman constitute the framework for promoting, protecting and monitoring the CRPD.

**1d.** Denmark collects data disaggregated by disability, sex and age of the individual recipients of goods and services focused on habilitation and rehabilitation. Denmark is currently working on collecting data based on each individual’s national identification number. The collected data is used to analyze and measure the effectiveness of the goods and services provided.

**1e.** With regard to individuals with mental disabilities who have committed a criminal act, the following rules apply:

According to the Danish Criminal Code, individuals who are of unsound mind due to a mental disorder or a comparable condition at the time of committing a criminal act are not punished. The same applies to individuals with severe intellectual disabilities. Individuals with moderate intellectual disabilities or other comparable conditions at the time of committing a criminal act are not punished unless the imposition of a penalty is justified by special circumstances.

If an individual is exempt from punishment due to mental disorder etc., the court may decide on the use of other measures considered expedient to prevent further offences. If less radical measures such as supervision, rehabilitation treatment, psychiatric treatment, etc., are considered insufficient, it may be decided that the individual must be committed to a hospital for the mentally ill or to an institution for the severely mentally impaired, or placed under supervision with a possibility of administrative placement or in a suitable home or institution offering special attention or care.

Individuals who suffer from severe mental illness (insanity) and who continuously pose a serious and immediate danger to the lives and health of others, can under exceptional circumstances, when less intrusive measures are not deemed sufficient, be placed in the Secured Department of Forensic Psychiatry, the Zealand Region. Placement in the Secured Department can take place either on the basis of a court ruling in a criminal case, or by decree issued administratively by the Ministry of Justice in accordance with the rules of the Danish Compulsion in Mental Health Care Act.

**1f.** In Denmark both social services and healthcare are universal and based on the principles of free and equal access for all citizens.

In general, all health and social services are financed by general taxes and are supported by a system of central government block grants, reimbursements and equalization schemes.

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***Rehabilitation in the social area***

Danish social legislation contains a large number of provisions aimed at various ways to ensure the habilitation and rehabilitation of people with congenital and/or acquired disability. These services complement rehabilitation services from other sector areas. The assistance under social legislation consists of rehabilitation and/or maintenance of physical, mental, cognitive and social skills and of support in the form of aids, cover of expenses, personal and practical assistance, etc., to compensate the citizen for his or her functional impairment. The objective is to give the citizen the best possible functional capacity – in terms of movement and activity, cognition, emotion and socially.

All these forms of help constitute voluntary services for the citizen, and he or she has a possibility to complain about both the nature and scope of the assistance offered.

***Rehabilitation in the health area***

The Danish Health Act provides for a right to equal and easy access to the health sector. Rehabilitation is not referred to in health legislation as a separate task or area of responsibility. Statutory services such as "retraining", "home nursing" and "patient-targeted prevention" are, however, all examples of services aimed at rehabilitation and to which everyone with a (medically) technical need is entitled – although subject to the restrictions following from individual provisions.

Rehabilitation in the health area is characterised by services from authorised health care professionals. These are often initiated at a hospital and then, upon discharge, provided by the patient's own general practitioner (who can i.e. refer the patient to services provided by a private physiotherapist) and the municipalities.

The government has just updated the joint guidelines on municipal rehabilitation. The guidelines are to underpin the municipal, interdisciplinary performance of tasks in the area of rehabilitation. The guidelines describe the existing set of rules across areas of legislation, the objective of rehabilitation, typical activities in rehabilitation programmes and the interdisciplinary cooperation, e.g. across municipal areas of administration.

***Rehabilitation at the local level***

The municipalities offer a comprehensive rehabilitation programme for all citizens in need. Rehabilitation includes physical and mental training and other measures aimed at restoring both functional abilities as well as the general ability to take care of oneself, including patient education and initiatives aimed at general education and employment.

E.g. must the municipal council offer a brief and time-limited rehabilitation programme to persons with functional impairment, if the rehabilitation programme is assessed to be able to improve the person's functional impairment and thus reduce the need for assistance (LTC). Such assessment shall be individual and specific and be based on the recipient's resources and needs. That means that the rehabilitation programme must focus on the specific ressources of the individual, give him or her the tools to get better and be independent for as long as possible. This approach means a shift from passive to active involvement where the person is involved in there own recovery and that the rehabilitation program and goals are based on an involvement of the individual.

**The Danish Health Authority**

The Danish Health Authority issues professional recommendations on training and rehabilitation for different patient groups and gives advice on the coordination of rehabilitation efforts across sectors to increase coherence and quality. Training and rehabilitation may commence at hospitals, and patients discharged from hospital are offered a rehabilitation scheme when necessary. Upon discharge, the hospital will send a rehabilitation plan, describing the functional level and rehabilitation needs of the patient, to both the municipality and the patient’s general practitioner, thus passing on the responsibility for rehabilitation and training schemes to the municipality. From July 1st 2018 patients with a rehabilitation plan have a free choice of provider if the municipality can not start the training within 7 days from discharge.

Training includes the training of bodily functions and training of activities designed to help patients regain former functional abilities. Rehabilitation also includes initiatives to help the patient become self-sufficient and able to manage everyday life. Patients with severe physical disability due to illness may receive training and treatment free of charge. Other services such as treatment by a chiropodist for patients suffering from diabetes, treatment by psychologists for particularly vulnerable groups, treatment at chiropractors and training supervised by physiotherapists, are partly covered by the municipality if prescribed by the general practitioner.

All patients who are temporarily or chronically ill or dying are entitled to home nursing when prescribed by a general practitioner, and the municipalities are required to provide all necessary aids and appliances free of charge.

**The legal rights of patients**

The legal rights of patients are protected by a number of laws which aim to ensure that patients receive the best possible care and regulate complaint procedures and compensation for injuries caused by services provided in the healthcare system.

Regional patient advisers have been established in each region to assist and guide patients in relation to diagnosis, treatment, choice of hospital, waiting time, access to treatment abroad and the procedures for submitting complaints and receiving compensation. The assistance provided by the patient advisers is free of charge and advisers work independently of the region and the staff at the hospital in question.

The Danish Patient Safety Authority serves as a single point of entry for all patients who wish to complain about healthcare professionals and/or treatment provided in the healthcare system (public and private). The Danish Patient Safety Authority is also responsible for making sure that knowledge gained from patient complaints and compensation claims is used preventively. Particularly serious cases may be submitted to the public prosecutor with a view to bringing the case before a court.

The Disciplinary Board of the Danish Healthcare system is an impartial public authority which may express criticism of healthcare professionals not acting in accordance with commonly agreed professional standards.

Patients who have sustained injuries caused by treatment in hospitals or by authorised healthcare professionals may be entitled to compensation, and patients can seek compensation by reporting injuries to the Danish Patient Compensation Association. The Danish Patient Compensation Association is responsible for applying the legislation that deals with injuries occurring in connection with treatment in the public and private healthcare system.

The Danish Patient Compensation Association may also award compensation in injuries related to pharmaceutical products, i.e. in cases where patients are injured because of side effects of medicines. Compensation is given for losses and expenses as a consequence of the injuries.

The regions cover the costs of compensation except for some treatments provided in the private healthcare system where the insurance company will pay. The Ministry of Health covers the costs of compensation in cases related to injuries caused by pharmaceuticals.

If either the patient or the other party in a case, i.e. the region, disagree with the decision made by the Danish Patient Compensation Association, they can appeal it to the Patient Compensation Appeals Board.

If either the patient or the other party in a case, i.e. the region, disagree with the decision made by the Patient Compensation Appeals Board, the case may be brought before a court.

It is free of charge for patients to seek compensation.

**Inspections and sanctions**

The Danish Patient Safety Authority supervises the activities carried out by healthcare professionals within the healthcare system. The authority makes inspections based on general supervisory cases and current patient complaints submitted to the independent Disciplinary board of the Danish Healthcare System. If after an inspection the authority finds reason to criticise or sanction the actions and activities of healthcare professionals, the case is brought before the Disciplinary Board of the Danish Healthcare System.

The Danish Patient Safety Board also follows up on organisational circumstances leading to adverse events to ensure that aspects of patient safety are considered and given priority by the hospital management. If general safety issues exposing patients to risks are identified, the Danish Patient Safety Authority has the legal capacity to issue instructions and guidelines for healthcare professionals.

From 2017, the supervisory measures has shifted towards a risk-based approach, so that more resources will be allocated to those institutions and healthcare providers where patients are exposed to the highest risks in order to improve the quality of healthcare services in general.

**1g.** When an individual with a disability is incarcerated, this person is allowed the opportunity to bring certain assistive devices, and the institution will help in providing them. A doctor or a nurse will evaluate the need of these assistive devices immediately after the incarceration if the disability is apparent, and the inmate will be able to request a conversation with a medical worker of his or her own accord.

Generally, there are no restrictions on medical assistive devices. When in doubt, the medical personnel will evaluate any potential safety risks. In the case of any such assistive device posing a safety risk, the medical personnel will suggest an alternative.

Moreover, should the institution not be able to provide the assistance needed for the inmate due to his or her disability, the inmate can be transferred to an adequate institution or hospital. Inmates with a disability can contact the institution in advance of his or her incarceration and ask for the availability of the medical assistive devices needed and thus come to a concrete agreement on how best to organize the incarceration period.

**1i.** Section 82 b in the Danish Act on Social Services states that a municipality can offer time bound assistance, nursing or support as well as time bound rehabilitation and support aimed at developing the skills of persons with disabilities, persons with social problems or persons in risk of developing impairments or social problems.

The help can be granted for a period of up to 6 months and it is a precondition that the municipality finds, that the services provided will improve the level of impairment or prevent further impairment.

2a. In Denmark, all considerations concerning the possible preparation of new legislation regarding habilitation and rehabilitation are carried out within the framework of Denmark’s human rights obligations. Before the government introduces a bill in Parliament a thorough assessment is made in order to ensure full compliance with these obligations. See also the answer to question 1b above.

2b. The municipalities cover all of Denmark and are responsible for implementing and administering the legislation and provisions issued at the state level. The decentralized organization ensures the design and delivery of social services as close to the citizen as possible. The municipalities provide the help on the basis of a specific and individual assessment of a person’s need for assistance. Regardless of the type of habilitation or rehabilitation it must be planned and provided with respect to the self-determination, needs and resources of the individual.

2c. The Danish National Board of Social Services measures the effect of social services targeted persons with disabilities. Social initiatives and services are to be based on enhanced knowledge and systematic efforts with the aim of extending the use of methods with a documented beneficial effect. Enhanced knowledge regarding target groups, needs, initiatives and effects will make it possible to offer the individual the most beneficial solution while public funds are allocated most effectively.

4. Denmark collects data disaggregated by disability, sex and age regarding the individual recipients of goods and services focused on habilitation and rehabilitation. Denmark is currently working on collecting data based on each individual’s national identification number. The data collected is used to analyze and measure the effectiveness of the goods and services provided.