Haut-Coomissariat Aux Droits de L’homme

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Referring to the request dated 27 June 2014 The Danish Ministry of Children, Gender Equality, Integration and Social Affairs is pleased to submit its answers regarding the questionnaire on the rights of persons with disabilities and article 19 of the Convention on rights of persons with disabilities.

Questions number 1A, 1B and a part of 5B fall under the competence of The Ministry of Health. Unfortunately, due to the holiday season we have not been able to receive these answers in time. We will forward the answers to these questions as soon as we receive them.

Please find below the answers to the questionnaire:

1. Does the constitution or national or local legislation, including civil and criminal law, of your country include provisions to avoid institutionalization and promote deinstitutionalization through (question 1A-1E including answers will follow):

*Answer:*

It is a guiding principle throughout Danish disability policy that the needs of the individual, and not the type of accommodation, decides which assistance should be provided. Consequently, accommoda­tion and services are separated, and persons with disabilities live independently. In 1998 the Act on Social Services was adopted, and it states that the municipality council must ensure personal and social development for persons with disabilities. This means for example that local authorities are to provide independent living and inclusion in the surrounding community for persons with disabilities.

In Denmark housing units for persons with disabilities are built pursuant to the Act on Social Service or pursuant to the Act on Social Housing. Applicants who are eligible for long-term accommodation facilities under the Danish Act on Social Services or for social housing for elder people and persons with disabilities who meet the conditions for obtaining such accommodation facilities, are entitled to choose between such facilities and to move from one facility to another.

**Persons in housing units pursuant to the Act on Social Service**

|  |  |  |
| --- | --- | --- |
|  | **Temporary accommodations** **(**Act on Social Services , section **107)** | **Long-term accommodations****(**Act on Social Services , section **108)** |
| **Impairment of physical function** | 534 | 1450 |
| **Impairment of mental function** | 3356 | 4449 |
| **Mentally ill**  | 2035 | 2406 |
| **Special social problems**  | 561 | 116 |
| **Total** | **6486** | **8421** |

**Person in housing units pursuant to the Act on Social Housing**

|  |  |
| --- | --- |
|  | **Dwellings** (Act on Social Housing section 105) |
| **Nursing Dwellings mainly for persons with mental/physical handicaps**  | 6771 |
| **General dwellings mainly for persons with mental/physical handicaps**  | 1291 |
| **Total**  | 8062 |

*Source: Statistic Denmark 2013*

Additional the stock of dwellings which are suitable for persons also contains approx. 35.000 dwellings for elderly.

1A: Prohibiting forced institutionalization or deprivation of liberty on the basis of disability or diagnosis, condition or impairment;

*Answer:*

Answer will be forwarded.

1B: Banning presumption of “dangerous” to self or others on the basis of disability or diagnosis, condition or impairment;

*Answer:*

Answer will be forwarded.

1C: Ensuring an array of options under social protection schemes to choose where to live, and thus avoiding institutionalization in homes, care centres or other segregated settings;

*Answer:*

Please refer to the answer on question 1.

1D: Ensuring the right to choose whom to live with, avoiding thus forced institutionalization or any other form of forced living arrangement;

*Answer:*

Please refer to the answer on question 1.

1E: Considering access to and availability of resources for supported decision-making processes for adults, providing the person concerned the opportunity to choose the kind of support desired.

*Answer:*

The Danish Act on Legal Incapacity and Guardianship is based on the principle that guardianship should be adjusted according to needs and should never exceed the necessary measures. The person to be placed under guardianship shall be consulted both prior to a court decision on full guardianship, where the person is deprived of his or her legal capacity, and decisions by the State Administration on other forms of guardianship. A decision on guardianship can be limited to a certain period of time if the conditions due to which the person is placed under guardianship are only temporary or if other conditions speak in favor of such a decision. As a main rule, the guardian must consult the person under guardianship before making decisions on important matters.

In the Government’s view, the Convention on the Rights of Persons with Disabilities allows for the withdrawal of legal capacity or support in exercising legal capacity, and/or compulsory guardianship, in cases where such measures are necessary, as a last resort and subject to safeguards.

1F: Providing for accessibility, physical and for communication and transportation, and to make all services for the general population also available for persons with disabilities, on an equal basis with others.

*Answer:*

The principle of sector accountability is a key element of Danish disability policy. All public authorities are responsible for making their facilities accessible to people with disabilities and for embedding disability policy aspects in policy development in respective areas. The principle of sector accountability implies that it is the responsibility of every ministry when drafting new legislation to consider if the proposed legislation is in accordance with existing human rights obligations e.g. art. 9 of the Convention on Rights of Persons with Disabilities.

Accessibility covers a wide range of fields such as communication, transport, technologies, information and the built environment.

Below there are some examples of how accessibility for persons with disabilities are dealt with in Denmark. In Denmark’s first report to the committee there is an extensive description of accessibility in e.g. the telecommunications legislation (Specific rights, art. 9, paragraph 104-116). To give another example please find below a description of accessibility according to the built environment.

There are defined guidelines to how the accessibility continuing must be developed in all the areas. These guidelines contributes to secure, that the accessibility continuing is improving and there through support the developing of a more accessible, open og inclusive society, where people with disability are able to participate on equal terms as others.

*Accessibility according to the built environment*

Accessibility to the built environment is essential for the ability of citizens with disabilities to participate in activities in society on an equal footing with citizens without disabilities. Accessibility is therefore an important part of The Danish Building Regulations. The regulations aim to ensure that new buildings and existing buildings that are comprehensively refurbished are accessible for people with disabilities.

Regulation includes rules on barrier free entrance, lifts, toilets for persons with disabilities etc.

However, recent research conducted by The Danish Building Research Institute indicates that the regulation on accessibility in the Danish Building Regulations is not always and consistently followed in a number of new buildings. The research indicates insufficient knowledge as the main cause.

The Danish Ministry of Climate, Energy and Building has launched two initiatives to address the current challenge to ensure a high level of accessibility to the built environment in Denmark as part of the action plan “A society for all”.

The first initiative aims at conducting an intensified campaign to inform, guide and advise the relevant partners in the building industry about the current regulation. The initiatives will also collect and spread knowledge of practical and innovative ways to meet the regulations, but at the same time allowing for e.g. architectonic variation etc. This is being implemented in a dialogue with The Danish Disabled Peoples Organisation, The Danish Institute for Human Rights and other relevant parties.

The second initiative aims at analyzing the current regulation to determine whether this may pose a barrier to inventing and implementing new innovative solutions when creating accessibility for persons with disabilities. It is important that the regulation allows for development in this area. Building professionals e.g. architects, engineers and constructors should not consider accessibility as a barrier for creating buildings that fit the need and demand for new solutions in the build environment.

These initiatives are now being implemented by The Danish Ministry of Climate, Energy and Building in a close dialogue with the relevant parties in the area of accessibility to the build environment in Denmark.

*Accessibility according to transport*

The Danish Government and public transport operators share a common goal to ensure that public transport is accessible to all, and that the pedestrian and traffic environments are designed and managed to enable people to reach and use public transport safely and with confidence.

The Government has adopted an accessibility policy in 2013 that applies to the entire area of the Ministry of Transport, which requires accessibility to be embedded in all phases (planning, execution and operation), when new infrastructural projects are adopted and established.

To the extent possible, new facilities and major renovation projects must be designed to give as many persons with various types of disabilities access to infrastructural projects. This accessibility policy pivots on the efforts made to give the highest number of people access to public transport or, alternatively, provide supplementary and compensatory transport solutions.

The metro project in Copenhagen serves as an example in which accessibility policy was embedded from the outset. The metro project was realized in close consultation with Disabled Peoples Organisations Denmark, a contributory factor for jointly finding the optimum and most accessible solutions. As a result, the metro is physically fully accessible.

With regard to the purchase of new trains Denmark will secure that the needs of persons with reduced mobility will be taken into account. Also when stations are substantially modernized the needs of persons with reduced mobility will be taken into consideration.

Denmark is bound by regulation 1371/2007 of the European Parliament and of the Council of 23. October 2007 on rail passengers’ rights and obligations.

Currently there are no plans for introducing new binding regulations or legislation in Denmark regarding accessibility to public transport.

2. Does your country have a plan or program that provides for, inter alia, the following services to support community living for persons with disabilities (question 2A and 2B including answers will follow):

An underlying principle throughout Danish disability policy is that people with reduced functional capabilities should to the extent possible be compensated for the consequences of their disabilities. Persons with disabilities must be able to function as normal as possible given the extraordinary strain that results from their disabilities – this also includes community living.

In Denmark we have the Act on Social Services, which sets the frame on the social field and ensures a number of services to among others people with disabilities. In the following answer the services relevant for the question are mentioned.

2A: Personal assistance; and

2B: In home and other community following questions.

*Answer:*

In Denmark we have different types of personal assistance, including:

Citizen-controlled personal assistance

The municipal council shall offer citizen-managed personal assistance. Citizen-controlled personal assistance shall be offered in the form of subsidies to cover the cost of employing care assistants and supervision and attendance of citizens with considerably and permanently impaired physical or mental function who require special support.

Socio-educational services

This help is given to adults who need, due to severely reduced physical or mental functional capabilities or special social problems, help to develop capabilities, care, support or rehabilitation, all aimed at enabling them to live their lives as they see fit or as independently as possible.

Care of close relative

A person in employment may be employed with the local authority to take care of a close relative with severely and permanently reduced physical or mental functional capabilities or long-term illness at home. The employment will be paied and last for a maximum of six months.

Attendance and contact person

The municipal council shall grant 15 hours of attendance to persons under old-age pension age, provided always that the age limit shall not be less than 67 years. Attendance shall be offered to persons whose freedom of movement is impeded due to substantial and permanent impairment of physical or mental function.

Personal assistance, care and attendance

The municipal council shall offer:

* personal care and assistance;
* assistance or support for necessary practical activities in the home; and
* meals services.

The assistance shall be offered to persons who are unable to carry out the said activities due to temporary or permanent impairment of physical or mental function or special social problems.

Rehabilitation measures

The municipal council shall offer rehabilitation measures to remedy the impairment of physical function caused by a disease which is not treated in connection with hospitalization.

The municipal shall also be responsible for establishing that any relative or other person can be involved in the safeguarding of the interests of a person with substantial impairment or mental function.

Finally it should be mentioned that the Danish Government, in October 2013, launched an action plan; ‘A society for all’. The plan includes a number of long-term visions and goals for the development of Danish disability policy as well as a number of short-term initiatives. The Plan will contribute to setting up political and economic priorities for disability-policy initiatives across policy areas, and it will function as a framework for the continued work of implementing the UN Convention.

The action plan focusses on six topics, which each in their own way supports the vision of a more inclusive and equal society: 1) Citizenship and Participation, 2) Education, 3) Employment, 4) More knowledge and better effect, 5) Consistency and quality and 6) Innovative solutions, new technology and increased availability. The action plan contains almost 50 initiatives across the mentioned themes.

The respective initiatives are rooted in different ministries and the timespan of the initiatives varies greatly. A few of them have already been completed, but for the most part they have been started up during the first months of 2014.

3. If so, please respond to the following questions:

3A: Are the services paid by the state entity (central/federal)

*Answer:*

The Danish Welfare State is based on the principle of solidarity and a high degree of redistribution. This means, inter alia, that the services offered to persons with disabilities are fully tax-financed. This principle is based on the idea that everybody shares the responsibility of ensuring that persons with disabilities have access to the necessary services. The principle of solidarity is a key element in Denmark’s disability policy.

The services mentioned in answer 2A are paid by the municipality.

3B: Are the service-providers chosen directly by persons with disabilities or is the choice made by other entities including companies, social security agencies, the government, medical insurance agencies, guardians or other third party?

*Answer:*

It depends on the service whether the service providers are chosen directly by the persons with disabilities or the municipality.

Following is or can be chosen by the person with disability:

* Citizen-controlled personal assistance
* Care of close relative
* Practical and personal assistance, care and attendance for persons with physical or mental function or special social problems who are not tenants and residents of care dwellings and similar housing units.

Following is chosen by the municipality for professional reasons:

* Socio-educational services
* Attendance and contact person
* Practical and personal assistance, care and attendance for persons with physical or mental function or special social problems who are tenants and residents of care dwellings and similar housing units.
* Rehabilitation measures

3C: Are persons with disabilities entitled to refuse the support offered and choose and alternative support?

*Answer:*

It is the municipality that decides what type of assistance the citizen is entitled to pursuant to the Act on Social Service. However there are exceptions where the citizen can choose between services if he or she meet the conditions for more alternative services.

3D: Can family members be service providers?

*Answer:*

Family members can be service providers on following services:

* Practical and personal assistance, care and attendance for persons with physical or mental function or special social problems who are not tenants and residents of care dwellings and similar housing units
* Citizen-controlled personal assistance
* Care of closely connected persons with disabilities or suffering from serious diseases and care of terminal patients
* Parents who support and train a child or a young person under the age of 18 suffering from considerably and permanently impaired physical or mental function in the home can get compensation for loss of earnings.

3E: Are the public and private service providers to choose from?

*Answer:*

There are a lot of different possibilities depending on the different type of service.

In some cases both municipalities and citizens can choose between public and private providers.

3F: Does the provision of services cover the entire country, in urban and rural areas with equal quality services?

*Answer:*

* The provision of the services covers the entire country, but because of the local self-government the quality can vary locally within the legislative framework.
* The responsibility for the development and implementation of the social policy is divided into three public levels: State, regions and municipalities.
	+ The state, in the form of the Danish Government, sets out the legislative framework for social action. Additionally state institutions also have a role in relation to monitoring and complaints on social issues.
	+ The five regions are have a key role in health care, but also operate some specialized services on the social field. Regions do not have any authority responsibility on the social field.
	+ The 98 local authorities have a key role in the social field. They are responsible for implementing the relevant law and rule on specific cases of assistance to persons or families who need support. It is also the responsibility of the municipalities to ensure that people get the help that is decided. But the actual delivery of aid can be made either from local, regional and private providers.

3G: Are these services available to all persons with disabilities, regardless of their impairment (please use article 1(2) of the convention on the rights of persons with disabilities as reference for ‘persons with disabilities’)?

*Answer:*

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 Danish disability policy has since the beginning of 1980 and is still based on four principles with a view to assessing disability in the relation between an individual’s reduced functional capacity and the surrounding society. These principles are also in accordance with The UN Convention on the Rights of Persons with Disabilities, which Denmark ratified in 2009.

Principle of equal opportunities:Since 1993 the principle of equal opportunities and equal treatment of disabled people has remained a pivotal element of the Danish disability policy, with the overall objective of creating “one society for all”.

Principle of solidarity:Everybody shares the responsibility of ensuring that the individual person with a disability has access to the necessary services, when the need arises. The solidarity principle is translated into reality in that services are widely financed by the state from tax income. The principle of solidarity is a key element of Denmark’s disability policy.

Principle of sector accountability:Sector accountability implies that the public authority responsible for an activity, a service or a product will also be responsible for making it accessible to people with reduced functional capacity.

Principle of compensation:The principle of compensation implies that a person with reduced functional capacity will to the widest possible extent be compensated for the consequences of the reduced capacity.

The definition of disability in article 1 in the convention is integrated in the Danish disability politics and services.

This means that all persons with disability have the right to get the support and help they need as a consequence of their impaired physical or mental function.

3H: Please, specify what Ministry is in charge of implementing these policies on provision of services.

*Answer:*

Regarding to the principle of sector accountability each public authority is responsible for making their facilities accessible to people with disability.

The Ministry of Climate, Energy and building is in charge of the accessibility to the buildings. The Ministry of Transport is in charge of the accessibility to the transport sector.

And The Ministry of Social Affairs is responsible for the Act on Social Services and is also the coordinating ministry in relation to disability politics.

4. Does your country have an independent accountability mechanism in place to monitor the implementation of deinstitutionalization policies, to avoid abuse in current segregated settings and to ensure access to justice, if needed?

*Answer:*

Denmark does not have a specific independent deinstitutionalization politic and as a result of this we do not have a specific independent accountability mechanism in place to monitor this topic specific.

But in accordance with article 33 in the convention, The Danish Parliament has nominated The Danish Institute for Human Rights as the independent mechanism for the promoting, protecting and monitoring of the implementation of the convention in Denmark. This job includes also advertising the government in disability questions, so that Denmark meets the requirements of the convention.

In addition, the Danish Parliament has set up The Danish Disability Council in 1980, which consists of an equal number of user representatives and authority representatives and has a dual role in advising public authorities, including the Danish Parliament, and monitoring the application of regulations, legislation and practice on matters related to disability.

Furthermore, the Danish Parliament has elected an Ombudsman to control the state and municipal authorities and other government authorities. The Ombudsman can investigate complaints against government authorities' decisions and their treatment of citizens of all ages and cases in all areas – including disability. The Ombudsman may also take up cases on its own initiative and carry out investigations on the case work of authorities.

Finally it should be underlined, that people living in housing units have the same legal protection and same access to justice as others.

5. Does your country have disaggregated data on persons with disabilities, including women, children and older persons:

5A: profiting from public housing programs and support services (compared to the general population) that enable them to live in the community, and:

*Answer:*

There are age distributed statistics for instance of the number of home care recipients, the number of residents in nursing homes and public housing and the number of recipients of socio-educational services. But those data are not connected to information of the recipients’ eventually impaired physical or mental function.

5B: institutionalized in psychiatric, social or other institutions? Please provide the available data.

*Answer:*

There is overall information about the type of impaired function among citizens living in accommodations under §§ 107 and 108 in the Act on Social Service (cf. question 1)

Further answer will be forwarded.