



PROVEDOR DE JUSTIÇA

Work and Employment of Persons with Disabilities *Experience of the Portuguese Ombudsman*

30.07.2012

I. General information

The *Provedor de Justiça* is both Portugal's Ombudsman and National Human Rights Institution, with A-status accreditation since 1999.

This independent State body is established in the Constitution and its main function is to defend and promote the rights, freedoms, guarantees and legitimate interests of the citizens, ensuring, through informal means, that public authorities act fairly and in compliance with the law. As a rule, the Ombudsman cannot intervene in relations between private entities, except when there is a special relationship of power from one over the other and the intervention aims to protect rights, freedoms or guarantees.

The Ombudsman can act either pursuant to complaints or on his/her own initiative, based on facts that otherwise come to his/her attention (e.g. NGO or media reports).

Whenever he/she finds illegality or unfairness to exist, the Ombudsman may send to the competent bodies such legislative or administrative recommendations as may be necessary to prevent, halt or remedy the situation. In less serious cases, the Ombudsman may simply formulate a critical remark or draw the attention of the public body concerned to the act or omission that needs amendment. The Ombudsman may also request the Constitutional Court to review the constitutionality or legality of norms, as well as the constitutionality of omissions.

To carry out his/her mission, the Ombudsman has a wide array of powers, such as the power to carry out inspections with or without prior warning and the power to make all investigations and enquiries that he deems necessary or convenient. Correspondingly, the law establishes a strong duty of public entities to cooperate with the Ombudsman.

As part of his/her promotion mandate, the Ombudsman is also competent to promote the dissemination of information on the content and meaning of fundamental rights, the aim of the Ombudsman institution, the means of action at its disposal and how to appeal to it.

As seen above, the Ombudsman's mandate is broad, including the protection and promotion of all fundamental rights, in relation to all citizens, without distinctions of



PROVEDOR DE JUSTIÇA

any sort. Without prejudice to this, the Ombudsman seeks to dedicate a particular attention to the most vulnerable groups, as they are not only more exposed to human rights violations, but also often less aware of their rights and less able to make use of available means to uphold them.

Matters relating to persons with disabilities are dealt with by a specialised Department on Children, Elderly Persons and Persons with Disabilities (N-CID), in operation since the end of 2009, under the direct supervision of a Deputy Ombudsperson designated to that effect.

In addition to defending the rights of children and young people, elderly persons and persons with disabilities pursuant to complaints, the N-CID also seeks to develop more proactive action, by focusing on promoting and disseminating information on the rights of these particularly vulnerable groups. Since its creation, the N-CID has brought together two pre-existing specialized and toll-free telephone services of the Portuguese Ombudsman: the Children's Hotline and the Elderly Citizens' Hotline. In 2011, the Citizens with Disabilities' Hotline began operating on an experimental basis.

The Citizens with Disabilities Hotline was created to receive complaints regarding cases of breach or risk of breach of the rights of persons with disabilities, as well as to provide information on such rights and available means to uphold them.

The three Hotlines deal with complaints in a particularly swift and informal manner, in direct contact and cooperation with the competent authorities and the complainants and providing to the latter all possible information about their rights and available remedies. If, however, a situation is too complex in nature to be solved directly by the Hotlines, a formal case is opened at the Office of the Ombudsman for further investigation.

II. The Ombudsman's experience in protecting and promoting the rights of persons with disabilities as regards work and employment:

In 2011, the Citizens with Disabilities' Hotline received 177 calls. The main issues addressed in the calls to the Hotline were information on tax benefits (17), integration in the labour market (11), social benefits (11) and the attribution and verification of incapacity levels (10). With specific relevance to matters of work and employment we would further mention the calls related to accommodation at work (5) and professional training (2).

As for formal cases dealt with at the Office of the Ombudsman, the following were identified as bearing a connection with the issues mentioned in the questionnaire:



PROVEDOR DE JUSTIÇA

- In 2012 the Portuguese Ombudsman received a complaint from a citizen with disability who had been excluded from a competition launched by a public service for the recruitment of three senior technical staff. The candidate had been approved through the applicable sections methods and thus should have been recruited under the quota for persons with disabilities established in Decree-law 29/2001, of 3 February 2001. However, he was excluded from the competition by the jury, who assessed the functions to be carried out and the capacity of the candidate, concluding that it would not be possible for him to perform them. The Ombudsman heard the competent entity to assess the candidate's capacity in case of doubt, which stated that the candidate could exercise those functions, although with functional limitations that, in the concrete case, could be overcome through technical aid and, eventually, adaptation of the work post. Nevertheless, the jury upheld the decision, celebrating the contracts with candidates who had received higher grades, in disrespect of the employment quota. A measure is now being prepared to be addressed to the competent Minister.
- In 2011 the Portuguese Ombudsman opened an own-initiative case to clarify the application of Decree-law 29/2001, of 3 February 2001, which establishes a quota system of public employment for people with disabilities, in the context of a national competition for teachers to meet temporary needs. The general rule of preference of the candidate with a disability was not being applied when the number of vacancies is less than three. In these situations, the application of the preference in favour of candidates with disabilities should result in the derogation of the general rules on tiebreakers, contained in the scheme of the competition for teachers. The case is still under investigation, as it was not yet possible to find a favourable solution.
- In 2011 the Portuguese Ombudsman opened an own-initiative case to study the system for evaluating the degree of incapacity of persons with disabilities. In light of the study that was carried out, the Ombudsman concluded that currently the degree of incapacity for disabilities of all kinds is assessed according to the National Table of Disabilities Due to Work Accidents and Professional Diseases. However, this Table is specifically designed to assess the degree of incapacity resulting from accidents at work and occupational diseases and therefore is not the appropriate instrument for assessing disabilities in general. The Portuguese Ombudsman therefore suggested to the Minister of Social Security and Solidarity and the Minister of Health, in conjunction, the adoption of specific rules to overcome these constraints by creating another table that allows the correct evaluation in relation to persons with disability, without having to resort to a table that was meant for another purpose. The Health Minister has accepted the Ombudsman's position, informing that efforts are



PROVEDOR DE JUSTIÇA

underway to constitute a commission to prepare a table that is not restricted to disabilities related to occupational diseases and accidents at work. As regards chronic patients, a working group with representatives from various universities has already been created. It has drafted a proposal for a grid regarding the most frequent chronic illnesses, which is now being evaluated, pursuant to which the proposal may be adopted.