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Workshop

The promotion and protection by national human rights structures of the rights of persons with disabilities

Budapest, 2- 3 December 2008

Outline of the Workshop

Description of the «Peer-to-Peer Project»:

The Peer-to-Peer Project, co-funded by the Council of Europe and the European Union, consists in a work programme to be implemented by the Office of the Commissioner for human rights in 2008 and 2009. It aims at setting up an active network of independent non-judicial national human rights structures (NHRs) compliant with the Paris Principles, with special focus on non EU member States.

In this context, workshops for specialised staff members of the NHRs are organised in order to convey select information on the legal norms governing priority areas of NHRs action and to proceed to a peer review of relevant practices used or envisaged throughout Europe.

The workshop “The promotion and protection by national human rights structures of the rights of persons with disabilities” will be organised 2-3 December in Budapest (Hungary).

General context :

The UN Convention on the Rights of Persons with Disabilities and its Optional Protocol entered into force on 3 May 2008. The Convention details the content of basic human rights of persons with disabilities and sets obligations for the States to ensure full enjoyment of these rights. The Optional Protocol provides individuals with a possibility to bring cases before a committee set up to monitor implementation of the standards. A novelty with this Convention is that it clearly confirms the important role of national human rights structures play. Art 33 of the Convention requires states parties to establish “a framework, involving one or more independent mechanisms to promote, protect and monitor implementation of the Convention” taking the Paris Principles into account. So far, six Council of Europe member states have ratified the Convention and its Optional Protocol¹ and a majority of member states has signed it, indicating an intention to ratify in the future.

¹ Austria, Croatia, Hungary, Slovenia, Spain and San Marino.

Important developments have taken place at the European level as well:

- The Council of Europe Action Plan 2006-2015 to promote the rights and full participation of people with disabilities in society² was launched in 2006. The Action Plan is complementary to the UN Convention in so far as it suggests specific measures, which would facilitate the ratification and the implementation of the UN Convention.
- Earlier this year the European Committee on Social Rights decided in an important “collective complaint” concerning children with moderate to profound intellectual disabilities living in residential centres and their right to education.³
- The European Court of Human Rights recently laid down important principles concerning the use of guardianship.⁴

The challenge is to put these principles and standards fully into practice. In reality, Europeans with disabilities face discriminatory treatment and flagrant human rights violations on a daily basis.

The workshop will consist of five working sessions. During the first session participants will identify obstacles preventing persons with disabilities to full enjoyment of their rights, and discuss how to ensure that persons with disabilities have access to the NHRs. This will be followed by a session giving an overview of the international legal standards. Two substantive rights - namely the right not to be discriminated against, particularly in the field of education, and the right to legal capacity – will be discussed more in detail during the working sessions three and four. The last session will cover the role of independent national mechanisms, as laid down in art 33 of the UN Convention, and how to conduct visits to places where persons with disabilities are deprived of their liberty. This has obvious connections to the role of ‘National Preventive Mechanisms’ under the Optional Protocol to the UN Convention against Torture.

These themes were chosen for the following reasons:

- Rights of persons with disabilities and how to protect and these rights have been given much focus both at the international and European level. Recent case-law from the European Court of Human Rights and the European Committee on Social Rights clarify the European standards. The new UN Convention on the Rights of Persons with Disabilities set progressive standards on right to education, legal capacity, disability-based discrimination and the role of NHRs. Several member states have however expressed uncertainty regarding how these standards should be implemented and some are even considering making reservations or so-called interpretative declarations upon ratification of the Convention potentially weakening the standards.
- Art 33 of the Convention relates directly to the activities of the NHRs. Through exchanges of experiences, participants will explore possibilities for NHRs to strengthen their capacity to promote and protect the rights of about 100 million Europeans with disabilities residing in the Council of Europe member states.

² Recommendation Rec(2006)5 of the Committee of Ministers to Member states on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015, referred to as the Council of Europe Disability Action Plan 2006-2015.

³ European Social Committee, *Mental Disability Advocacy Centre v. Bulgaria*. 3 June 2008.

⁴ European Court of Human Rights, *Shtukaturov v. Russia*, 27 March 2008

Themes of the workshop:

The idea of the first session is to share experiences regarding what barriers hinder persons with disabilities to enjoy their rights. Such barriers can be physical or legal or connected to attitudes and stigma. For example, the possibility to be politically active may be circumscribed by legal barriers, inaccessible voting procedures or simply because public information is not provided in an accessible format. In addition, persons with disabilities face problems when trying to claim their rights. Particularly, persons under guardianship and/or detained in institutions are prevented from access to courts or other complaints mechanisms in several countries. Participants will discuss how they can ensure that persons with disabilities have access to their services on an equal basis with others.

Important developments in the standard setting have taken place over the last few years both at the UN and at the European levels. The second session will give an overview of the new standards and give a possibility for discussion about their application.

The third session will focus on disability-based discrimination in general and within the field of education in particular. Even though every child's right to education is enshrined in international law, there are still children of school age who are considered to be "uneducable" in some countries and denied their right to education. Such discrimination not only limits the children's options to support themselves as adults, but also their possibilities to become independent and active citizens. The UN Convention as well as case-law from the European Committee on Social Rights have clarified the standards. Several NHRs have many years of experience in combating discrimination. Participants will exchange experiences and ideas regarding issues such as: strategies for combating discrimination and promoting education for all, challenges in dealing with individual complaints, challenges in dealing with violations where the 'victims' cannot themselves complain, and ways of dealing with cases concerning inaccessible environments.

The forth session will cover the right to legal capacity. Removal or restriction of legal capacity by placing an adult under guardianship affects individuals' right to vote, to decide where to live, how to spend our money, whether and with whom to get married. In several member states, adults are still deprived – on the basis of a medical diagnosis – of their legal capacity to take legally relevant decisions. The result of such procedures is that these persons can no longer make such decisions with legal effect. Sometimes they cannot even access a court to challenge this legal incapacitation. The session will cover both the legal framework and how the right to legal capacity can be protected and promoted.

Finally, attention will be given to the role of NHRs, as national independent mechanisms in art 33 of the UN Convention and as national bodies conducting visits to places where persons with disabilities are deprived of their liberty. Most countries that have ratified or are considering ratification of the UN Convention struggle with how to implement art 33. This session will focus on how NHRs can promote the establishment of such independent mechanisms to be an engine for change at the national level. The second part concerns the protection of the rights of persons with disabilities residing at closed departments of psychiatric hospitals, social care homes and other institutions for persons with disabilities. Several reports from international monitoring organs as well as from civil society highlight malpractices, such as keeping persons in bed all day, over-medication and abuse of restraints taking place in such institutions. Institutionalisation as such is also a human rights violation under the UN Convention on the Rights of Persons with Disabilities. As with all closed settings, effective complaints procedures and independent monitoring visits are of crucial importance to ensure that human rights are respected. Hence NHRs have an

important role to play. The participants will discuss, together with a Member of the European Committee for the Prevention of Torture, the elements necessary to ensure that their monitoring activities are accessible and effective.

The objectives of the workshop:

1. Strengthening the knowledge by the NHRs of applicable standards on the rights of persons with disabilities.
2. Allowing NHRs to monitor in a continuous and effective way the implementation, by national, regional and local authorities, the international and European standards on the subject.
3. Promoting the exchange of "good practices" between NHRs.
4. Encouraging NHRs to make their services fully available and accessible to all persons with disabilities, including people under guardianship and/or detained in institutions.

Working methods:

The workshop will focus on the legal standards governing the theme mentioned above, and facilitate exchanges of views among peers on the different practices applied or contemplated in Europe.

In each working session, a preponderant place will be reserved for an exchange of experiences, good practices and difficulties encountered by NHRs.