

**T.C.
MARMARA UNIVERSITY
EUROPEAN COMMUNITY INSTITUTE
DEPARTMENT OF POLITICS AND INTERNATIONAL RELATIONS OF EU
POSTGRADUATE PROGRAM IN EUROPEAN STUDIES**

**NON-DISCRIMINATION AGAINST HANDICAPPED
IN THE EU AND TURKEY
WITH SPECIAL EMPHASIS ON
EDUCATION AND TRAINING**

Master Thesis

M. Ebru Dayanç Türemen

İstanbul, 2006

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**Supervisor:
Assoc. Prof. Dr. Yıldız Güven**

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ABSTRACT

The study aims to determine and compare the existing situation of the people with disabilities in the fields of education, employment and discrimination in the European Union countries and Turkey. Since the social domains employment and education are the key elements for social inclusion and social welfare for the sake of elimination of discrimination, they are the social policy areas in which the effect of discriminative attitude is felt heavily in the EU countries. So, they become primary research areas.

The importance of education of the disabled or “special education” is that it acts as a foundation stone in the development of disability policies and projects. Participation of people with disabilities into social life and especially to labour force is sensitive to their education.

The researches on disability and discrimination and related social policies in these fields indicate that there are promising studies realised in the EU, USA and Turkey. The UK appears to be the only European country that has a well organised legislation on disability anti-discrimination. On the other hand, when the social indicators are considered, France has been found as the country with weighted institutionalism which leads to disability discrimination to a certain extent. It could be concluded that the EU seems to declare a Disability Law by 2010 bringing its sectoral parts into an inclusive whole following its Disability Action Plan. The EU also needs to improve its sustainable prosperity by including the people with disabilities in its labour force when the aging population of the EU is considered.

Besides the EU countries, it is pointed out by social indicators that there are discrimination problems in employment and education fields stemming from the implementation of the legislation in Turkey as well. Turkey is currently working on comprehensive projects to increase the education and employment level of the people with disabilities. Harmonisation with the EU acquis in the related fields is among the priorities of Turkey.

ÖZET

Bu çalışmada, AB ülkeleri ve Türkiye'deki engelli bireylerin eğitim, istihdam ve ayrımcılık alanlarındaki durumlarının saptanması ve karşılaştırılmasını amaçlanmıştır. Avrupa Birliği ülkelerinde ayrımcılığın en yoğun hissedildiği sosyal politika alanlarından istihdam ve eğitim sosyal katılımın ve refahın önemli unsurları olarak karşımıza çıkmaktadır.

Özel eğitimin önemi bunun özürülük politikaları ve projelerinin oluşturulmasına temel oluşturmasından kaynaklanmaktadır. Engellilerin sosyal hayata ve bilhassa iş gücüne katılımları, onların eğitimlerine karşı duyarlı olan konulardır.

Engellilik ve ayrımcılık kavramları ile bunların dayanağı olan sosyal politikalar üzerindeki literatür araştırmaları Avrupa Birliği, Amerika Birleşik Devletleri ve Türkiye'de bu konuda yoğun çalışmaların yapıldığını göstermektedir. Avrupa Birliği ülkeleri arasında İngiltere engellilere yönelik ayrımcılık karşıtlığında yerleşik mevzuata sahip tek ülke olarak belirlenmiştir. Fransa ise sosyal göstergelere bakıldığında geniş çaplı engelli ayrımcılığına yol açan kurumsallığın fazla olduğu ülke olarak görülmektedir. Avrupa Birliği'nin sektörel parçaların bir araya toplanması ile 2010 yılında Engelli Eylem Planını tamamlayarak bir Engellilik Yasası çıkarabileceği sonucuna varılmıştır. Yaşlanan nüfusu göz önüne alındığında, Avrupa Birliği engellileri iş gücüne katarak sürdürülebilir refahını geliştirmek istemektedir.

AB ülkeleri yanı sıra, sosyal göstergelere bakıldığında, Türkiye'nin de istihdam ve eğitim alanlarında mevzuat uygulamasından kaynaklanan ayrımcılık sorunları bulunduğu ortaya çıkmaktadır. Türkiye hali hazırda engellilerin eğitim ve istihdam düzeylerini yükseltecek kapsamlı projeler üzerinde çalışmaktadır. Avrupa Birliği müktesebatıyla ilgili konularda uyumlaştırma Türkiye'nin öncelikleri arasındadır.

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ABBREVIATIONS

ADL	Activities of Daily Living
CEEP	European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest
COM	Communication
DAP	The EU Disability Action Plan
DASDA	Dissemination Activity Supporting Design-for-All
DG	Directorate General
EC	European Community
ECJ	European Court of Justice
EES	European Employment Strategy
EMR	Educable Mentally Retarded
ES	Employment Service
ESF	The European Social Fund
ESS	The European Statistical System
ETUC	European Trade Union Confederation
EU	European Union
EYPD	The European Year of People with Disabilities
FAPE	Free and Appropriate Public Education
FETD	Framework Equal Treatment Directive
FP6	The Sixth Framework Programme
GA	General Assembly
GRC	Guidance Research Centre
HLGD	The EU High Level Group on Disability
IAS	Intelligent Assistive Systems
ICD	International Classification of Diseases
ICF	The International Classification of Functioning
ICIDH	The International Classification of Impairments, Disabilities, and Handicaps
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Program
ISCED	International Standard Classification of Education
ISIL	Intelligent Systems for Independent Living
IST	Information Society Technologies
LFS	The European Labour Force Survey
LSHPD	Long Standing Health Problem or Disability
MEP	Members of the European Parliament
MoNE	Ministry of National Education
MS	Member States
NCLB	No Child Left Behind
NGO	Non Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal
OMC	Open Methods of Coordination
PCA	Personal Capability Assessment

PWD	People with Disabilities
SDC	The Special Day Class
SEN	The Special Educational Need
SILC	The European Statistics on Income and Living Conditions
STT	Schooling, Training and Transitions
T.C.	Republic of Turkey
TEU	The Treaty on European Union
TSER	Targeted Socio-Economic Research
UEAPME	European Association of Craft, Small and Medium-sized Enterprises
UK	The United Kingdom
UN	The United Nations
UNICE	Union of Industrial and Employers' Confederations of Europe
USA	The United States of America
WHO	World Health Organisation

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INTRODUCTION

The fundamental rights and freedoms and equality of opportunities for all individuals that were introduced by many international declarations and treaties following the Second World War, led people with disabilities become aware of their legal rights and freedoms. Not only had the individual problems of the people with disabilities but also the integration of the disabled people into the society gained importance in many developed countries in the world. The concept of discrimination, which acts as a barrier for the disadvantaged groups including the people with disabilities for the integration into the society, is now considered as one of the priority areas that should be eliminated by the developed countries.

Disability and disability discrimination are important issues not only from social policies point of view but also economics point of view. This field of study is among the highest priorities regarding the agenda of the EU. It has turned out to be one of the important bases of existence for the EU for its integrity and prosperity. Disability and discrimination have turned out to be important issues for Turkey as well on the negotiations of accession to the EU. Special education issue on the other hand, is a major step towards mainstreaming and inclusion of people with disabilities in the field of education.

The proportion of the disabled people within the overall population is much higher than expected. Disability as a concept has a long journey to reach to the current state of evolution through different paradoxical meanings. The risk of discrimination against disabled people causes them to be disadvantaged and a cost to society as low manpower and high maintenance.

The developments in the field and the evolution of understanding in the domain of disability have brought western countries, the EU and the United States to a point where important steps have been taken recently. Turkey also has a considerable place in the efforts. However, it has become a necessity to put forward in a comparative study how the disability issues differ from one country to another including the EU Member States, Turkey and U.S.A. The dynamics playing role regarding the construction of social issues

in disability policy could make this comparison a very meaningful one. The purpose of this research is to cover these areas and act as a step between the legislative works and applications. The study may serve as a bridge over the EU studies and Turkish studies regarding the actions and preparations for disability policy issues and special education domain.

The study is composed of three chapters besides the introduction chapter and conclusion chapter. Chapters are arranged in sequence according to the objectives of the study. The first chapter is on “disability”, the second chapter is on “disability discrimination” and the third chapter is on “special education and integration” issues.

Fundamental concepts in disability like disability and handicap, prevention, rehabilitation and equalisation of opportunities are studied in the first chapter. Definition of disability is studied from conceptual models and classification systems points of view. These models and systems are put forward from impairment, functional limitations and ecological perspectives. Definition of disability is examined in four areas as assistance with activities of daily living (ADL), income maintenance and income support, employment provisions and human rights legislation where the fundamentals of disability policies of the EU member states are described. The place of disability within social policy and EU legislations are put forward. The key documents related to disability in the EU are focused on.

The second chapter on the discrimination of the handicapped starts with the study on the definition of the term “discrimination”. The relation of disability and equality with discrimination is studied. The place of discrimination as a concept within the EU legislation and policy is studied together with the European action plan in the enlarged EU. This action plan is deeply examined with its phases and priorities. The existing situation and the current indicators about disability and education in the EU are studied from employment and integration points of view. The high level group for disability is the final topic studied in the second chapter.

The third chapter is devoted to special education, the study on the brief history then followed by categorisation of disabilities and integration. Inclusive education is studied by its applications in the U.S.A. and the EU together with Turkey. World

Declaration on Education for All, The Salamanca Statement, The Charter of Luxembourg, The Madrid Declaration and Council Resolution on Equal Opportunities for Pupils and Students with Disabilities in Education and Training are the key documents in studying the legislative framework of inclusive education in the EU.

One of the main points of this thesis is to cover the research area from its hard point, the special education; to its soft point, the social policy on disability. In doing this, the efforts regarding the non-discrimination of disabled people are to be emphasised especially in social activity domains like education and employment. On the other hand, topics like accessibility and mobility have also been part of this comprehensive work.

CHAPTER I

1. BASIC CONCEPTS FOR DISABILITY

This chapter is based on the disability issues taken from conceptual and international context which later leads to the EU and Turkey. In the first place, the chapter is composed of fundamental concepts on disability, conceptual models, classification systems, disability defined in selected studies and basics of social policy on disability. Secondly, it studies the build of disability legislation and social indicators on disability in the EU. It also concentrates on the disability issues in Turkey and harmonisation of the Turkish disability policy with the EU acquis.

1.1. Fundamental Concepts in Disability

Fundamental concepts in disability issues and their definitions and descriptions are as follow:

1.1.1. Disability and Handicap

A great number of different functional limitations occurring in any population in any country of the world are implied with the term disability. People may be disabled by permanent or transitory impairments, conditions or illnesses such as physical, intellectual or sensory impairment, medical conditions or mental illness. In the United Kingdom, the term disabled person is preferred over people with disabilities (Pfeiffer, 2002).

Limitation of opportunities to take part in the social life in equal terms with others may be described by the term handicap. It covers struggling involvement between the person with a disability and the environment. The term handicap was defined as a function of the relationship between persons with disabilities and their environment (Standard Rules for the Equalisation of Opportunities for Persons with Disability, UN GA A/RES/48/96, 1993). This term emphasizes the focus on the shortcomings in the environment and in many organized activities in society. Areas like information, communication, education, and mobility which prevent persons with disabilities from participating on equal terms, form the examples for those organized activities in society.

The relationship between the use of the two terms disability and handicap could be studied in the light of modern disability history. During the 1970s there were strong reactions against the terminology among representatives of organisations of persons with disabilities and professionals in the field of disability. The terms disability and handicap were used to give poor guidance for policy-making and for political action as being unclear and confusing.

The terminology of these terms put forward a medical and diagnostic approach, which ignored the imperfections and deficiencies of the surrounding society (individual-medical model for disability paradigm).

The International Classification of Impairments, Disabilities, and Handicaps, (ICIDH) adopted by the World Health Organisation in 1980, makes a clear distinction between the terms “impairment”, “disability” and “handicap” by suggesting a more precise and at the same time relativistic approach (Office for Disability Issues, 2004). This classification was extensively used in the fields like rehabilitation, education, statistics, policy, legislation, demography, sociology, economics and anthropology.

The definition of the term handicap has been criticized as being too medical and too centred on the individual, and may not sufficiently clarify the interaction between social conditions or expectations and the abilities of the individual.

With the implementation of the World Programme of Action (1982) and the United Nations Decade of Disabled Persons, an acknowledgement and an awareness raising took place concerning the disability issues and the terminology used. The World Programme of Action concerning Disabled Persons was adopted by the United Nations General Assembly at its 37th regular session on 3 December 1982, by its resolution 37/52. 1/ (Prime Minister Administration for Disabled People, 2003).

Current terminology maintains equilibrium between the individual needs (such as rehabilitation and technical aids) and the shortcomings of the society (various obstacles for participation).

1.1.2. Prevention

The term prevention has primary (narrow) and secondary (extended) meanings. Action aimed at preventing the occurrence of physical, intellectual, psychiatric or sensory impairments is the primary meaning of the term prevention. Action aimed at preventing impairments from causing a permanent functional limitation or disability is the secondary meaning of the term prevention. Prevention may be involved in various types of actions; such as primary health care, prenatal and postnatal care, education in nutrition, immunisation campaigns against communicable diseases, measures to control endemic diseases, safety regulations, programmes for the prevention of accidents in different environments, including adaptation of workplaces to prevent occupational disabilities and diseases, and prevention of disability resulting from pollution of the environment or armed conflict (Standard Rules for the Equalisation of Opportunities for Persons with Disability, UN GA A/RES/48/96, 1993).

1.1.3. Rehabilitation

Rehabilitation is a process aimed to enable persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric and/or social functional levels providing them with the tools to change their lives towards a higher level of independence. Measures to provide and/or restore functions, or compensate for the loss or absence of a function or for a functional limitation may also be included in the rehabilitation. The initial medical care is not in the scope of rehabilitation. However, rehabilitation includes a wide spectrum of measures and activities starting from more basic and general rehabilitation to goal-oriented activities, for instance vocational rehabilitation (Standard Rules for the Equalisation of Opportunities for Persons with Disability, UN GA A/RES/48/96, 1993).

1.1.4. Equalisation of Opportunities

Equalisation of opportunities is a process through which the various systems of society and the environment, such as services, activities, information and documentation, are made available to all, particularly to persons with disabilities. Assessing the needs of every individual on equal terms is the principle of equal rights. All resources must be

activated in such a way as to ensure that every individual has equal opportunities for participation (Standard Rules for the Equalisation of Opportunities for Persons with Disability, UN GA A/RES/48/96, 1993).

Persons with disabilities should receive the support they need within the ordinary structures of education, health, employment and social services since they are members of society and have the right to participate in social life.

Equal rights recall equal obligations forming a base for the equalisation of opportunities. As part of the process of equal opportunities, assistance should be provided to persons with disabilities to assume their full responsibility as members of society (Standard Rules for the Equalisation of Opportunities for Persons with Disability, UN GA A/RES/48/96, 1993).

1.2. Conceptual Models and Classification Systems

Disability is difficult to define because it is a multi-dimensional concept with both objective and subjective characteristics. When interpreted as an illness or an impairment disability is seen as a defect on individual's body or mind. When interpreted as a social construct, disability is seen in terms of socio-economic, cultural and political disadvantages resulting from an individual's exclusion.

Persons with disabilities, advocacy groups, medical practitioners and the general public all have a different view of disability. The meaning of disability has evolved over the years through various perspectives such as moral perspective, medical perspective, social or human rights perspectives. Three major classification systems or disability perspectives which helped in defining disability over the decades have been discussed below (Office for Disability Issues, 2004). Understanding of these perspectives is important not only in the way the term disability was defined but also on program design and on decisions about program eligibility. Although a distinction can be made between 'model' and 'paradigm', they are considered synonymous (Pfeiffer, 2002).

1.2.1. Impairment Perspective (Medical Model)

The impairment perspective considers disability as a health problem or abnormality that is situated in an individual's body or mind. This perspective is best expressed by the medical model which views disability in terms of disease, illness, abnormality and personal tragedy. The medical model assumes that disability is an intrinsic characteristic of individuals with disabilities. This assumption attempts to practice fixing individuals' abnormalities and defects, which are seen as strictly personal conditions (Office for Disability Issues, 2004).

The individual model studies factors that best favour adaptation of people with disabilities to the conditions they live in (Zolkowska, Kasior & Blaszkiewicz, 2002). Many criticize the medical model for its limitations. That is the model which ignores the role of the social and physical environment in the disabling process. Moreover, the model indicates the defect in a person's body or mind and that person may be defined as defective, abnormal and biologically or mentally inferior (Office for Disability Issues, 2004).

The International Classification of Diseases (ICD) is a system of coding diseases and health conditions that is used by most of the health services around the world. The World Health Organisation (WHO), the body responsible for periodically revising the ICD, released the tenth revision (ICD-10) in 1999.

The ICD was developed exclusively in consultation with international medical and rehabilitation professionals, including associations of hospitals and medical doctors; it did not involve persons with disabilities or their organisations. The ICD also does not cover the social and environmental aspects of impairment and disability.

Biomedical approach models itself to function in the interests of the medical system, health care professionals, social welfare workers, charitable fundraising organisations, and so on. Disability rights activists indicate that the biomedical model is a limited way of understanding and managing disability and has become mutually involved with discrimination issues and also a part of the discrimination and oppression experienced by disabled individuals. People with disabilities were used to be isolated,

instructed, regulated, institutionalized, and controlled to a degree by any other minority group through rationalisation of the biomedical approach to disability (Jung, 2002).

1.2.2. Functional Limitations Perspective (Individual Model)

The functional limitations perspective appeared as a result of the attempts to expand the medical model to include non-medical criteria of disability, especially the social and physical environment. Nonetheless, the notion is based on the perspective that impairments are the direct cause of disability. Also, like the impairment perspective, the functional limitations perspective considers disability in quantitative terms, measuring functional restrictions against a standard (Office for Disability Issues, 2004).

The WHO's 1980 International Classification of Impairments, Disabilities and Handicaps (*ICIDH*) is the first major classification system to focus specifically on disability. According to the *ICIDH*, disability refers to any reduction or lack of ability, caused by impairment. The *ICIDH* framework presents disability as a linear process that begins with an underlying cause which brings about impairment and which in turn causes a disability that may result in a handicap. Many have criticised *ICIDH*'s linear explanation of disability (Office for Disability Issues, 2004).

1.2.3. Ecological Perspective (Social Model)

The ecological perspective appeared in the 1970s, but became more prevalent in the mid-1990s in response to criticism of the impairment and functional limitations perspectives. Like the latter perspective, the ecological perspective rests on three distinct disability concepts: pathology (or abnormality), impairment and disability. However, it defines disability as a concept resulting from the interaction of impairment, activity limitations and participation restrictions with a specific social or physical environment such as work, home or school (Office for Disability Issues, 2004).

There are many variations of the social model, but all portray disability as a social construct created by ability-oriented and ability-dominated environments. The social model rejects the linear causality. According to the social model, even though impairment has an objective reality that is attached to the body or mind, disability has more to do

with society's failure to account for the needs of persons with disabilities. The human rights model is a distinct subgroup of the social model. It defines disability as a social construct. The model is primarily concerned with the individual's inherent dignity as a human being (and sometimes with the individual's medical characteristics) (Office for Disability Issues, 2004).

The social model is usually explained by referring to its opposing model, the medical model (European Commission, 2002, CE-V/5-02-004-EN-C). According to the social model exclusion and marginalisation are not consequences of an individual's impairment but are the consequences of social discrimination. In the similar expression, disability does not refer to bodily impairments and limitations; it is the naming of the experience of oppression. Social approach researchers direct their attention to the disabling effects of a normalizing society rather than focus on fixing people with disabilities (Jung, 2002).

The medical model views disability as a personal problem which is directly caused by disease, accident or some other health condition, and capable of betterment by medical interventions such as rehabilitation. The social model sees disability not as an inherent attribute of a person but as a product of the person's social context and environment, including its physical structure (the design of buildings, transport systems etc) and its social constructions and beliefs, which lead to discrimination against disabled people (European Commission, 2002, CE-V/5-02-004-EN-C).

The European Community increasingly emphasises the so-called social dimension of disability, according to the way of functioning of the EU. The social model studies limitations imposed by the environment (Zolkowska et al, 2002).

The social model also reflects the definition of a disabled person: a disabled person is an individual with all the rights who is placed in a situation that makes him/her handicapped - a situation resulting from environmental, economic and social obstacles which they, in contrast to other people, cannot overcome due to their inherent shortcoming. (Zolkowska et al, 2002).

A close relative of the medical model is the 'social welfare model' (Waddington and Diller, 2000: European Commission, 2002, CE-V/5-02-004-EN-C) which sees medical impairments as automatically resulting in disadvantage and exclusion, which can be improved by cash benefits and other social welfare policies. It is often assumed that traditional social policies incorporate the social welfare model and therefore they are based on a medically oriented interpretation of the nature of disability (European Commission, 2002, CE-V/5-02-004-EN-C).

The social model does not give straightforward insights into (European Commission, 2002, CE-V/5-02-004-EN-C):

- How the boundaries between disabled and non-disabled people should be drawn in social policy. Indeed, many advocate that the process of drawing boundaries is highly injurious in itself.
- How definitions in social policy should be formulated and operationalised, but it raises a number of important issues for social policy. First and foremost, the social model implies that policies should be directed at the removal of barriers for the full participation of disabled people, rather than 'problematising' the disabled person. This suggests that policies should be concerned with identifying the situations leading to disabilities rather than disabled people.

Symbolic disability policies do not require precise describing of what is meant by disability, although there may be issues about what the general public understands by disability. For example, people with mental illnesses are not always understood to be disabled, so a policy may have to address to the issues on definition in order to be effective. As described above, the social model is very influential in defining disability in this sense. One possible extension is to explore the scope of disability in order to administer the social policy without using definitions of disability. Policies could establish general rights, potentially exercisable by any citizen, but likely to be of greatest value to those with a disability (European Commission, 2002, CE-V/5-02-004-EN-C).

It is possible to consider that there are various detailed models for social model. However, two of the versions of social model are notable (Pfeiffer, 2002).

One version of the Social Model is found mainly in the UK (the crypto Marxist version) which states that the organisation of society (social organisation) produces discrimination experienced by people with disabilities. According to this social model, that social organisation must be changed in order to end discrimination based upon disability (Pfeiffer, 2002).

The other version of the Social Model is found mainly in the United States and states that fulfilling the 'normal role models' in society helps constitute a person's identity, at least as seen by others. The definition of disability is an unexpected difference which makes some roles impossible or at least quite difficult to carry out. According to this social model, changing these role expectations will end discrimination based upon disability (Pfeiffer, 2002). In this context, the policy orientation adopted by society is towards rehabilitation; the aim of which is to help compensate for the deviation and to encourage the disabled person to get closer to the social norm as much as possible.

Although these two versions of social models are related, they are actually distinct phenomena. Their distinctions may lead to different consequences in researches they are used. In case these distinctions are not considered, then it may lead to unnecessary conflicts and misunderstandings between researchers. Researchers using the UK Social Model will analyze the social structures and their impact on the people with disabilities and they work on changes in social structures. Researchers using the US Social Model will analyze social roles and attitudes toward failure to fulfil them and seek to change attitudes and behaviours (Pfeiffer, 2002).

1.3. Studies of Common Disability Definition in the EU

In 2002, two other major studies focused on the definition of disability in the European context. The first study "Assessing disability in Europe - Similarities and differences" is the result of a three-year research project (1997-2000) financed by the Council of Europe (Dal Pozzo, Fratello, Haines & Laroche, 2002). It is a comparative analysis of disability assessment methods used to establish eligibility criteria for benefits for people with disabilities in twenty-two Council of Europe member states. It found that

there were four basic approaches to the assessment of disability (Office for Disability Issues, 2004): (1) barema methods, (2) care needs assessment, (3) functional capacity determination and (4) economic loss estimation. The report also describes the role of multidisciplinary teams in determining the allocation of allowances and personal assistance and, more particularly, in evaluating the person's potential for professional and social (re)habilitation and (re)integration in the community and the economy. The study highlights the need for more research, cross-border communication and further harmonisation of disability assessment methods in Europe in order to move towards greater homogeneity of systems. It calls for a coherent policy for persons with disabilities within Europe.

The second study entitled “Definitions of disability in Europe: A comparative analysis” (European Commission, 2002) is the result of a two-year research project that was published in September 2002 under the auspices of the European Commission. The Commission's interest in the definition of disability stems from, among other things, ‘the regulations governing the cross-border claiming of social security benefits and access to welfare services’ and regulations governing public procurement and state aids in the area of subsidies and restrictions on competition relating to the operations of sheltered workshops. The Commission is also interested in the creation of common space where common methods of collecting and analyzing data related to disability can be established to share information.

The Commission specifically mentioned that its goal in commissioning the research was not to move towards a single standard definition, but rather to develop a framework in which different definitions could be located and compared (Office for Disability Issues, 2004).

The study (Definitions of Disability in Europe: A Comparative Analysis) adopted a framework for comparison that is "relevant and meaningful in describing the disability policies of the member states" (European Commission, 2002). It discusses the definition of disability in the four following areas (Office for Disability Issues, 2004):

- 1) Assistance with activities of daily living (ADLs),

- 2) Income replacement,
- 3) Employment provisions,
- 4) Anti-discrimination legislation.

The following provides an analytical summary of the findings of the study by the European Commission.

1.3.1. Assistance with Activities of Daily Living (ADL)

Given the nature of needs requiring assistance with ADL (e.g., eating, moving and personal hygiene, home help, disability or health-related extraordinary expenses), most member states of the EU define disability in this area in terms of the needs to be met. Many countries specify certain types of impairments that qualify for assistance with ADLs. Other countries do not specify any impairment for assistance purposes. Although in the area of assistance with ADLs there seems to be clear connections between health status and disability-related needs, the study by the European Commission (*Definitions of Disability in Europe: A Comparative Analysis*) argues that "the structure of entitlement" in the States of the EU does not follow this natural pattern:

In a number of states, assistance with ADLs is only available to recipients of disability income maintenance benefits (in several states, the most extensive ADL assistance is confined to recipients of industrial injury and occupational disease benefits). To qualify for ADL assistance, recipients have to pass two types of test in sequence: first a test of inability to work and then a test of limitations in performing ADLs (European Commission, 2002).

The study argues that this double testing might be based on the assumption that work-related activities are more demanding than the basic activities of daily life, and consequently, restrictions in performing the latter translates into more difficulties doing the former. However, "work may involve abilities to perform highly specific activities which are compatible with inability in some basic ADLs" (European Commission, 2002, p.26).

Another issue relates to the use of different activities that qualify as ADLs. While in many states ADLs mean the ability to sit, lie down and get out of bed, others include incapacity to maintain personal hygiene and to dress and eat, some include mobility and transportation-related activities and social activities (e.g., housework and household management, communication and aspects of social participation).

1.3.2. Income Maintenance and Income Support

All member states of the EU and Norway provide cash benefits for people who are unable to work due to disability. Many states have two benefits (Office for Disability Issues, 2004):

- 1) Contributory insurance benefits which provides a flat-rate or earnings-related benefit
- 2) Non-contributory benefits which provides basic income support, which may or may not be means-tested.

In most member states of the EU, work incapacity is the first criterion for establishing eligibility for income replacement benefits. Some states have adopted the concept of ‘partial disability’, in recognition of regular part-time work. However, as the study of the European Commission argues;

In practice, few recipients of partial benefits do in fact work, so the system operates more as a way of awarding lower benefits to less severely disabled people (if household income is sufficiently low as a result, benefits may be supplemented with social assistance). The definitions of disability used for the benefits in Europe are based on lack or loss of work capacity or earning capacity. The appropriateness of these definitions depends on whether plausible connections can be made between work capacity and health status. Since claimants are usually not working, the central issue for assessors is to establish whether the applicant's non-employment is because of the state of his or her health or for some other reason (general labour market conditions, low skills, lack of motivation, etc) (European Commission, 2002, p.26).

The study (Definitions of Disability in Europe: A Comparative Analysis) shows that disability defined on the basis of work incapacity can be assessed in different ways: through a "procedural approach", probing the reasons a person stopped being part of the labour force; or through a "worker's capacity profile" where the focus is on the cause of work incapacity. The method consists of comparing an applicant's capacity profile with a job requirement. A third approach evaluates disability without explicit reference either to past or potential work, focusing instead on the extent to which a person's functioning is impaired.

Programs concerned with the reintegration of applicants in the labour force tend to evaluate the work inability in which options for medical and/or vocational rehabilitation and other return to work opportunities are explored. An example of an explicitly procedural approach is the 'step-by-step' process. In this process, the potential for taking back of the previous job, with or without rehabilitation, is explored first, followed by consideration of other possible jobs with the same employer, and then of other job options with or without rehabilitation. Other states are not so explicit, but an implicit process may be created, for example by rules requiring the administration to consider 'rehabilitation before pension' as in Germany (Office for Disability Issues, 2004).

Under the 'capacity profile' approaches, some states evaluated disability by taking a 'snapshot' of a person's work capacity at a specified point, for example after the designated sickness benefit period ends. Assessment tools are used to determine "the threshold for work incapacity". In the Netherlands physicians use a standardized approach for measuring a claimant's functional ability to perform work. The approach defines 28 different types of action required in different occupations, including the basic activities in the Personal Capability Assessment (PCA) but also more specialized work-related activities such as tolerance of environmental conditions (reactions to heat, dryness etc), tolerance of vibration, ability to use special tools on the body (e.g. masks), etc (Office for Disability Issues, 2004).

The Impairment-based approaches for disability assessment are impairment tables or baremas. They include ratings for the damage from disease and internal injuries, sometimes measured using innovative medical technologies. The tables are divided into

chapters based on physical or mental components of the body or body systems and contain guides to medical benchmarks of normal condition (Office for Disability Issues, 2004).

1.3.3. Employment Provisions

The EU study also describes how definitions are used in employment provisions. While rehabilitation may be naturally linked to disability, many provisions for training are of potential value to a wider range of people who face obstacles entering employment which may or may not be related to a health limitation. For example, the Employment Service (ES) may provide living allowances for people undertaking training, and these may be paid for a longer duration for those designated as 'disabled' than for others. Subsidies may be paid to employers who take on different categories of workers who face obstacles entering employment; these may be paid at different rates or durations for different categories (e.g. one rate for the long-term unemployed and another for the disabled).

The definition of disability under employment provisions is often qualified by non-disability-related terms such as people who are 'hard-to-place' (Office for Disability Issues, 2004). In many European states, a system of quota was established as an employment strategy for persons with disabilities. Employers are obliged by law to hire and retain a given proportion of employees with disabilities or pay a fine.

The disability policy and programs have different purposes and intents. The tension between programs that use definitions based on somewhat competing conceptual models makes pursuing the goal of a single, generic definition of disability difficult. Indeed, the understanding of disability from the social and human rights perspective are broader than for entitlement to programs providing income support benefits. Not surprisingly, some income support programs and tax measures of some countries tend to use eligibility criteria based on a combination of medical and functional limitations approach. Some institutions in the world collect and process medically certified information on the type and severity of disability assessed in terms of impairment that result in a certain degree of functional limitations. Not everyone can reasonably claim

entitlement to disability-related income support, and tax relief (Office for Disability Issues, 2004).

The social and human rights conceptions of disability have influenced more recent legislative, policy and program developments. Anti-discrimination legislation is perhaps the most notable example of a legislative outcome based on this newer conception of disability. Surely, human rights legislation aims to include everyone with a disability, regardless of degree or type of limitation.

1.3.4. Anti-discrimination Legislation

In November 2000 the EU issued a Directive (Council Directive 2000/78/EC) which established a general framework for equal treatment in employment and occupation and outlawed discrimination based on religion, belief, disability, age and sexual orientation (the Framework Equal Treatment Directive, FETD). The FETD does not contain a definition of disability. There are examples in the member states of general prohibitions on discrimination (in national constitutions, for example) where disability is mentioned but not defined. Other states use broad definitions covering minor disabilities, yet others use detailed definitions that limit coverage to people with substantial disabilities.

1.4. Basics of Social Policy for Disability in General

A historical trajectory outlining the development towards mainstreaming could be provided. There are three stages in this process, corresponding to three different approaches to the concept of equality and justice in combating discrimination (Diakité, 2005).

a) Individual justice model

- The first stage focuses on equality for everyone and involves legislation which ultimately protects the individual. Individual rights, complaints and solutions are thus the main concern.

- The positive aspect of this model is that it is easy to use, states like it due to its straightforward applicability.
- The downside of the individual justice model is that there is no focus on structural discrimination and its effect on groups.

b) Group justice model

- The second stage focuses on group rights and minority politics; social and intercultural rights. Adoption of group rights laws protecting groups such as the Roma, Jews, Indians and black people occurs as a result of the pressure of minority groups. Sweden has adopted laws that protect five minorities.
- The advantage of such a model is that it concentrates on improvements through special measures and quotas which aim to counteract structural discrimination.
- The disadvantage is that it may appear to temporarily disfranchise some members of society.

c) Mainstreaming model

- Thirdly, the mainstreaming process involves a strengthening of individuals and groups (model I and II), through NGO empowerment and capacity-building. The idea is to promote cooperation between public authorities, civil society and enterprises. This process relies not only on national legislation protecting the individual but aims for civil society to be active and influential providing knowledge about the laws. So, people can act on their own behalf.
- A diversity and complexity of actions characterize this stage. There is room for different perspectives and various levels of action, but everyone gathers around the concepts of equality and justice.
- The advantages are that it promotes the cooperation between all parties and makes use of individual and group models.
- The disadvantages are that it may be very costly (for education and training) and may have the same effect as model II.

The evolvement of social policy for disability has taken a long route till it reached to its context in the present. There are four milestone international documents in this evolution and they have been studied below.

1.4.1. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights is a declaration adopted by the United Nations General Assembly. The 1968 United Nations International Conference on Human Rights decided that the Universal Declaration of Human Rights constitutes an obligation for the members of the international community to all persons. The declaration has served as the foundation for the original two legally-binding UN human rights covenants: the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. It continues to be widely cited by academics, advocates, and constitutional courts.

There are a total of thirty articles on human rights in the declaration, but the most important seven principles in brief are: (1) The right to life, liberty and security of person, (2) The right to an education, (3) The right to employment, paid holidays, protection against unemployment, and social security, (4) The right to participate fully in cultural life, (5) Freedom from torture or cruel, inhumane treatment or punishment, (6) Freedom of thought, conscience and religion, and (7) Freedom of expression and opinion (A/RES/217, December 10, 1948 at Palais de Chaillot, Paris).

1.4.2. The European Convention for the Protection of Human Rights and Fundamental Freedoms

The European Convention on Human Rights entered into force on 3.09.1953 and put forward a number of fundamental rights and freedoms (right to life, prohibition of torture, prohibition of slavery and forced labour, right to liberty and security, right to a fair trial, no punishment without law, right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, right to marry, right to an effective remedy, prohibition of discrimination). More rights are granted by additional protocols to the Convention. It secured these rights

and freedoms to everyone through the European Court of Human Rights in Strasbourg (The Council of Europe, 2004).

1.4.3. World Programme of Action Concerning Disabled Persons

The World Programme of Action concerning Disabled Persons, adopted by the General Assembly by its resolution 37/52 of 3 December 1982, was the most important outcome of the International Year of Disabled Persons, 1981. The Year and the World Programme of Action both emphasized the right of persons with disabilities having the same opportunities as other citizens and an equal share in the improvements in living conditions resulting from economic and social development. The term handicap was defined as a function of the relationship between persons with disabilities and their environment (The United Nations, 2006).

The Global Meeting of Experts to Review the Implementation of the World Programme of Action concerning Disabled Persons at the Mid-Point of the United Nations Decade of Disabled Persons was held at Stockholm with UN General Assembly resolution A/RES/42/58, adopted at 85th Plenary Meeting, 30 November 1987. The necessity to develop a guiding philosophy for the recognition of the rights of persons with disabilities was emphasized to indicate the priorities for action in the coming years. It was recommended in the meeting that the General Assembly gather a special conference to draft an international convention on the elimination of all forms of discrimination against persons with disabilities. A draft outline of the convention was prepared however no consensus could be reached on the suitability of such a convention in Assembly sessions. Existing human rights documents seemed to secure the equal rights for persons with disabilities with that of the non-disabled.

1.4.4. Standard Rules on the Equalisation of Opportunities for Persons with Disabilities

The traditional approach to disability policy has been based on the belief that disability is a deviation from normality (according to social model based on normal role models). Currently, this relationship between disability and normality is undergoing a revolution; a revolution urged forward primarily by disabled people themselves. In this

respect, it is increasingly being recognised on a global scale that human difference should be taken as a phenomena which is both natural and beneficial to human society (The European Commission, 2002).

It can be said that the European social policy defines and envisages a society who is truly concerned with human rights; a society defending the right of its disadvantage groups or minorities to be different and do not compelling those disadvantage groups or minorities to an artificial norm constructed by a perceived majority. Depending upon this vision and policy, the limitations faced by disabled individuals could no longer be linked to their disabilities but to society's inability to adapt to the difference posed by the disability itself. Provision of equal opportunities to all citizens is the fundamental of the EU's social policy.

This European approach is based on the notion of right rather than charity and an accommodation for difference rather than a compulsory adjustment to an artificial norm. Therefore, this approach in social policy supports a full notion of equal citizenship and inclusion rather than segregation and exclusion. Actually, this approach was reflected in 1993, when the United National General Assembly, including the entire EU member states, adopted a resolution entitled Standard Rules for the Equalisation of Opportunities for Persons with Disability (Adopted by UN General Assembly resolution A/RES/48/96, 85th Plenary Meeting, 20 December 1993).

Standard Rules for the Equalisation of Opportunities for Persons with Disability (UN GA A/RES/48/96, 1993) argues that there is a large number of persons with disabilities in the world and their number is getting higher. According to the understanding of these rules, the variations in the causes and consequences of disability policies are the result of different socio-economic circumstances and different provisions made for the well-being of their citizens.

Considering the developments undertook over the past 200 years, the disability policy reflects the general living conditions and social and economic policies of different time periods in its development. There are also many specific circumstances that have influenced the living conditions of persons with disabilities. In other words, general living conditions, specific circumstances and social and economic policies of different

time periods had an impetus on both the prevailed disability policy and persons with disabilities. Persons with disabilities have been isolated by social factors like ignorance, neglect, superstition and fear those have made delayed their development (The European Commission, 2002).

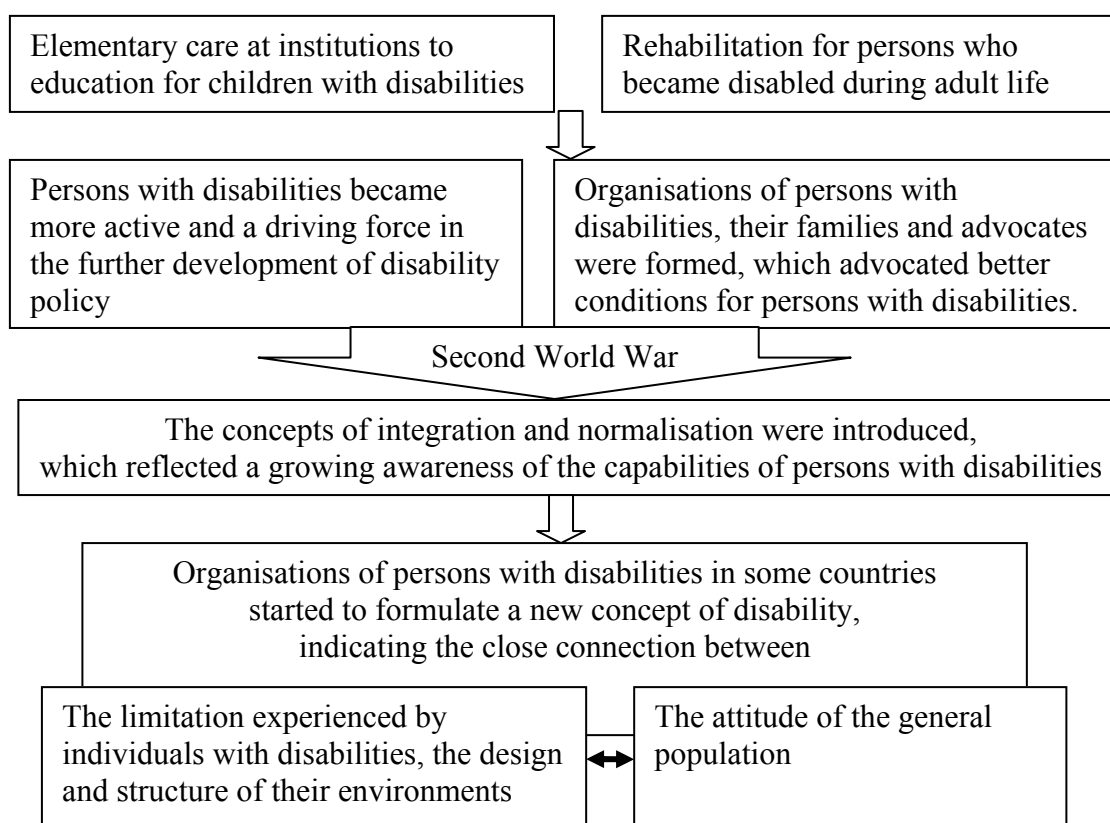


Figure 1.1. Steps in Evolution in Social Policy for Disability in the World

Source: Adopted from The European Commission (2002). *The definition of disability in Europe: A comparative analysis*. Final Report (3 September 2002). A Project Funded by the European Commission, Employment and Social Affairs Directorate-General. Brunel University, UK. P.17

The problems of disability in developing countries were more and more highlighted. In some of those countries the share of the population with disabilities was estimated to be very high and persons with disabilities were extremely poor (The European Commission, 2002).

There were numerous international actions before Standard Rules for the Equalisation of Opportunities for Persons with Disability (UN GA A/RES/48/96, 1993)

came into force. The rights of persons with disabilities have been the subject of much attention in international organisations including the United Nations over a long period of time.

Towards the adoption of resolution on standard rules (UN GA A/RES/48/96, 1993), The Economic and Social Council, guided by the discussions and considerations in the UN General Assembly, finally agreed to concentrate on the elaboration of an international instrument of a different kind at its first regular session of 1990. The Council by its resolution 1990/26 of 24 May 1990 authorized the Commission for Social Development to consider, at its thirty-second session, the establishment of an ad hoc open-ended working group of government experts. This working group is to elaborate standard rules on the equalisation of opportunities for disabled children, youth and adults, in close collaboration with the specialised agencies, other intergovernmental bodies and non-governmental organisations, especially organisations of disabled persons. The Commission was also requested by the Council to finalise the text of those rules for consideration in 1993 and for submission to the General Assembly at its forty-eighth session.

A wide support for the new initiative to elaborate Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (UN GA A/RES/48/96, 1993) is presented in the subsequent discussions in the Third Committee of the General Assembly at the forty-fifth session. The initiative for standard rules received the support of a large number of representatives and discussions led to the adoption of resolution 32/2 of 20 February 1991 at the thirty-second session of The Commission for Social Development. In that resolution the Commission decided to establish an ad hoc open-ended working group in accordance with Economic and Social Council resolution 1990/26 of 24 May 1990.

The development of The Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (UN GA A/RES/48/96, 1993) was mainly based on the experience gained during the United Nations Decade of Disabled Persons (1983-1992). The political and moral foundation for the rules was constituted by The International Bill of Human Rights, comprising the Universal Declaration of Human Rights, the

International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, as well as the World Programme of Action concerning Disabled Persons.

Considering that the rules are not compulsory, they are expected to become international customary rules when they are applied by a great number of states with the intention of respecting a rule in international law. They call for the recognition of its strong moral and political commitment by states to take action for the equalisation of opportunities for persons with disabilities. Key points like important principles for responsibility, action, cooperation as well as areas the quality of life and the achievement of full participation and equality are indicated in the resolution. The Rules put forward an instrument for policy-making and action to persons with disabilities and their organisations. Besides all, a basis for technical and economic cooperation among states, the United Nations and other international organisations are provided by them (The European Commission, 2002).

The purpose of the rules is to ensure that people with disabilities, as members of their societies, may exercise the same rights and obligations as others. There are still obstacles preventing persons with disabilities from exercising their rights and freedoms and making it difficult for them to participate fully in the activities of their societies in all societies of the world. States are responsible to take appropriate actions to remove such obstacles. Persons with disabilities and their organisations should partner the states as playing an active role in this process. In order to mobilize human resources through a general and worldwide effort, the equalisation of opportunities for persons with disabilities is essential (The European Commission, 2002).

The main principles of disability policy emerging from the Standard Rules might be summarised as a general shift in approach from disability as a medical issue to one of disability as a human rights issue, the replacement of a moral character of compensation for perceived abnormalities by one of the removal by society of barriers to inclusion of all its members and by a new emphasis on the need to mainstream actions, that is, including a disability dimension in policy recommendations covering a wide spectrum of

social and economic concerns. Although the Standard rules are non-compulsory, they offer a strong moral and political impetus to take specific action at all level of government.

1.5. Build of Disability Legislation in the EU

This section of the study starts with a structural introduction to the EU and continues with the study of the general principles and sources of the EU Law. It concludes with the build of social policy with regard to disability issues in the EU.

1.5.1. Institutions of the European Union

The EU comprises twenty-five Member States: Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

There are, at present, two acceding and two candidate countries: Bulgaria, Romania, Croatia and Turkey.

There are four principal institutions which are entrusted with carrying out the tasks of the EU. The Council of the European Union, European Commission, European Parliament, and European Court of Justice (ECJ) are held below.

1.5.1.1. The Council of the European Union

The Council of Europe was created at the end of the Second World War for the purpose of promoting European unity, protecting human rights and facilitating social and economic progress. The Council of Europe created the European Convention for the Protection of Human Rights and Fundamental Freedoms (2000/C 364/01, Official Journal of the European Communities, C 364/1, 2000). The European Court of Human Rights is based in Strasbourg, and oversees the implementation of the Convention.

Article 14 of the Convention provides some protection against discrimination, as does the 12th Protocol to the Convention which entered into force on 1 April 2005. Out of the 13 countries involved in the present project only Cyprus has ratified and will therefore be bound by the 12th Protocol as of April 2005.

Some features of the Council of the EU:

- Legislative arm based in Brussels (Belgium)
- The Council has six key responsibilities:
 - To pass European laws: in many fields it legislates jointly with the European Parliament;
 - To co-ordinate the broad economic policies of the Member States;
 - To conclude international agreements between the EU and one or more States or international organisations;
 - To approve the EU's budget, jointly with the European Parliament;
 - To develop the EU's Common Foreign and Security Policy; and
 - To co-ordinate co-operation between the national courts and police forces in criminal matters.
- Consists of representatives of the Member States at ministerial level (one representative per Member State) who are authorised to commit their governments
- The Presidency of the Council is held on a rotation basis by Member States for six-month periods
- The President of the Council represents the EU in international affairs

1.5.1.2. European Commission

- Executive arm based in Brussels (Belgium)
- The European Commission has four main roles:

- To propose legislation to the Parliament and the Council;
 - To manage and implement EU policies (e.g. discrimination policies) and the budget;
 - To enforce Community law (jointly with the Court of Justice); and
 - To represent the EU on the international stage, for example by negotiating agreements between the EU and other countries.
- Consists of one Commissioner per Member State, appointed by the governments for five-year terms, acting impartially and independently, with responsibility for a particular policy area.

1.5.1.3. European Parliament

- The Parliament has three main roles:
 - It shares with the Council the power to legislate;
 - It exercises democratic supervision over all EU institutions, and in particular the Commission. It has the power to approve or reject the nomination of all Commissioners, and it has the right to censure the Commission as a whole; and
 - It shares with the Council authority over the EU budget. At the end of the procedure, it adopts or rejects the budget in its entirety.
- The monthly plenary sessions are held in Strasbourg (France) - the Parliament's 'seat'. Parliamentary committee meetings and any additional plenary sessions are held in Brussels (Belgium), whilst Luxembourg is home to the administrative offices (the 'General Secretariat').
- Members of the European Parliament (MEPs) are directly elected by universal suffrage every five years; any EU citizen may stand for election and EU citizens may vote in whichever Member State they live in.
- MEPs may not concurrently serve in a national government but may hold a seat in a national parliament; they sit in multinational political parties.

- Committees are set up to deal with particular issues. There is a Committee on Employment and Social Affairs, one on Women's Rights and Gender Equality and one on Civil Liberties, Justice and Home Affairs, but there is not as yet a Committee dedicated to other equality issues. The Committee on Petitions responds to petitions submitted by individuals who consider that their protected EU rights have been violated.

1.5.1.4. European Court of Justice (ECJ)

- Main court of the EU, based in Luxembourg
- Consists of one judge per Member State, assisted by eight Advocate-Generals whose role is to present reasoned opinions on the case to the ECJ
- Judges appointed by joint agreement of the governments of the Member States for renewable six-year terms
- Main jurisdiction:
 - Requests for a preliminary ruling: if a national court is in any doubt about the interpretation or validity of an EU law it may, and sometimes must, ask the ECJ for advice. This advice is given in the form of a 'preliminary ruling';
 - Proceedings for failure to fulfil an obligation: the Commission or Member States can initiate proceedings if they have reason to believe that a Member State is failing to fulfil its obligations under EU law; and
 - Appeals on points of law only against judgments by the Court of First Instance, which was created in 1989 to alleviate the workload of the ECJ, and which is also based in Luxembourg.
- Decisions are reached by majority. There are no dissenting opinions; judgments are signed by all the Judges who took part in the deliberations and are read in open court.

1.5.2. General Principles and Sources of EU Law

The EU must act within the limits of its powers as set out in the Treaties. The principle of subsidiarity regulates the lawfulness of the exercise of competence: in areas which do not fall within its exclusive competence (i.e. where competence is shared with the Member States) the EU can only take action if the objectives of that action cannot be sufficiently achieved by the Member States.

In cases of conflict, the EU law is supreme over national law. This is to ensure the uniformity of EU law and its interpretation by the national courts. The ECJ has held that the EU constitutes a new legal order for whose benefit the Member States have limited their sovereign rights, and that a national court is under a duty to give full effect to provisions of EU law even if this means refusing to apply conflicting national law, whether adopted prior or subsequent to the particular piece of EU legislation (European Commission, 2006).

The sources of EU law can be divided into three categories:

- Primary sources: The Treaties between the Member States, and agreements with third countries.
- Secondary sources: Regulations, Directives, Decisions, Recommendations and Opinions.
- Other sources: General Principles of EU law developed through the case law of the ECJ, and 'soft law' (e.g. guidelines and resolutions).

1.5.2.1. Treaties

- The EC Treaty and Protocols, as amended by the Merger Treaty of 1965 and the Acts of Accession (1972: UK, Ireland, Denmark; 1979: Greece; 1985: Spain, Portugal; 1995: Austria, Finland, Sweden; 2003: Cyprus, Czech Republic,

Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia; 2005: Bulgaria, Romania)

- The Euratom Treaty
- The Single European Act of 1986
- The Treaty on European Union (of Maastricht) of 1992
- The Treaty of Amsterdam of 1998
- The Treaty of Nice of 2000

1.5.2.2. Secondary Sources

Article 249 of the EC Treaty states:

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A decision shall be binding in its entirety upon those to whom it is addressed.

Recommendations and opinions shall have no binding force.'

Regulations

- Binding law
- Directly applicable: come into force by virtue of their publication in the Official Journal of the European Union, from the date specified in them, or in the absence thereof, from the twentieth day following that of their publication
- Do not require any national implementing measures
- Can be relied upon in national courts by individuals
- General application - apply to and in all Member States

Directives

- Binding law in the Member State to whom it is addressed
- Enter into force either on the date specified in them or on the twentieth day after their publication in the Official Journal of the EU

- But require domestic implementing measures within a certain time period from adoption
- Member States must ensure that they adopt implementing measures before the expiry of the time deadline so that national law reflects the terms of the Directive – this process is called transposing the Directive
- Before the expiry of the time period, Directives cannot be relied upon in national courts
- Once the time period has expired, can be relied upon in national courts by individuals but only against the State or agents of the State and if certain conditions are met
- Member States can be liable for non-implementation or for imperfect transposition of a Directive

Decisions

- Binding law
- But only on those to whom it is addressed, e.g. a company which has been found in breach of competition law
- Can be relied upon in national courts by individuals

1.5.2.3. Other Sources

Case law/General principles of the EU law

- Fundamental human rights (including the European Convention on Human Rights)
- Equality/non-discrimination
- Proportionality
- Legal certainty/legitimate expectations/non-retroactivity
- The right to be heard
- Legal professional privilege

1.5.3. Build of Social Policy With Regard to Disability in the EU

It is an important issue for the EU to unify standards among member countries and eliminate differences with regard to social policy and rehabilitation of people with disabilities. The EU social policy is aimed at equalizing the conditions and actively joining various spheres of social and economic activity by economically weaker population groups of the EU member countries. The study of the EU activities for people with disabilities is a social issue in social policy, a concept of social order affected by experience of various natures, political, cultural, and economic (Zolkowska et al, 2002).

1.5.3.1. Statements and Resolutions

The first general European Community strategy (covering fifteen countries) was published in the Statement of equal opportunities for the disabled (EC Communiqué of August 30, 1996). The document was not binding in its nature. It relied on social understanding of disability. The document presented a general idea of the integrating policy toward disability and needs of people with disabilities as part of the Community's general policy. The statement postulated a civil dialogue with non-government organisations (Zolkowska et al, 2002).

In December 1996, the Council of Ministers of member countries adopted a document entitled Resolution on equal opportunities for the disabled (Resolution of the council and of the representatives of the governments of the member states meeting within the council of 20 December 1996 on equality of opportunity for people with disabilities). Although not binding in its nature, the document is a sign of approval of the European standard that was established. The Resolution puts emphasis on identifying and removing the various barriers to equal opportunity and full participation in society of persons with disabilities (Zolkowska et al, 2002).

Legal key documents on disability issues from the European Commission and the European Council are listed as follows (European Commission, 2006, EMPL995979434):

Situation of disabled people in the enlarged European Union: the European Action Plan 2006-2007, Communication from the Commission to the European Parliament, the European Economic and Social Committee and the Committee of the Regions, COM (2005) 604 final, Brussels, 28.11.2005, Commission of the European Communities (ref. Annex).

On the implementation, results and overall assessment of the European Year of People with Disabilities 2003. Communication from the Commission to the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Submitted by the European Commission in accordance with Article 13 of Council Decision 2001/903/EC {SEC(2005) 1252}, COM (2005) 486 final, Brussels, 13.10.2005, Commission of the European Communities.

Disability mainstreaming in the European Employment Strategy, Employment, Social Affairs and Equal Opportunities DG, Employment strategy and European Social Fund policy development and coordination, Brussels, 1/07/2005, EMPL/A/AK D (2005), EMCO/11/290605, European Commission.

Council conclusions of 1st and 2nd of December 2003 on the follow up of the European Year of People with Disabilities and the promotion of Equal Opportunities for People with Disabilities, 18.02.2004, The Council of the European Union.

Equal opportunities for people with disabilities: A European Action Plan, Communication from the Commission to the Council, the European Parliament, The European Economic and Social Committee and the Committee of the Regions, COM (2003) 650 final, Brussels, 30.10.2003, Commission of the European Communities.

Council Resolution of 15.07.2003 on promoting the employment and social integration of people with disabilities 2003/C 175/01, Official Journal of the European Union, C 175/1, 24.07.2003, The Council of the European Union.

Council Resolution of 06.05.2003 on accessibility of cultural infrastructure and cultural activities for people with disabilities 2003/C 134/05, 06.06.2003, The Council of the European Union.

Council Resolution of 06.05.2003 on equal opportunities for pupils and students with disabilities in education and training (2003/C 134/04), Official Journal of the European Union, C 134/6, 07.06.2003, The Council of the European Union.

Council Resolution on 06.02.2003 ‘eAccessibility’ — improving the access of people with disabilities to the knowledge based society 2003/C 39/03, Official Journal of the European Union, C 39/5, 18.2.2003, The Council of the European Union

Council Resolution of 03.12.2001 on the European Year of People with Disabilities 2003 (2001/903/EC), Official Journal of the European Communities, L 335/15, 19.12.2001, The Council of the European Union.

Proposal for a Council Decision on the European Year of People with Disabilities 2003, Presented by the Commission, 2001/0116(CNS), Brussels, COM (2001) 271 final of 29.05.2001, Commission of the European Communities.

Council Directive 2000/78/EC of 27.11.2000, establishing a general framework for equal treatment in employment and occupation, Official Journal of the European Communities, L 303/16, 2.12.2000, The Council of the European Union.

Council decision (2000/750/EC) of 27 November 2000 establishing a Community action programme to combat discrimination (2001 to 2006), Official Journal of the European Communities, L 303/23, 2.12.2000, The Council of the European Union.

Towards a Barrier Free Europe for People with Disabilities, Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the regions, Brussels, COM (2000) 284 final of 12.05.2000, Commission of the European Communities.

Council Resolution (1999/C 186/02) of 17.06.1999 on equal employment opportunities for people with disabilities, Official Journal of the European Communities, C 186/3, 2.7.1999, The Council of the European Union.

Council Recommendation (98/376/EC) of 4 June 1998 on a parking card for people with disabilities, Official Journal of the European Communities, L 167/25, 12.6.1998, The Council of the European Union.

Resolution of the council and of the representatives of the governments of the member states meeting within the council of 20.12.1996 on equality of opportunity for people with disabilities, Com406/res, 1996, The Council of the European Union.

A New European Community Disability Strategy, Communication of the Commission on equality of opportunity for people with disabilities, Brussels, COM (96) 406 final of 30.07.1996, Commission of the European Communities.

Resolution of the Council of 31.05.1990 and the Ministers for Education meeting within the Council concerning integration of children and young people with disabilities into ordinary systems of education, Official Journal No. C 162, 03/07/1990 P. 0002 – 0003, 90/C 162/02, the Council of the European Union.

1.5.3.2. Amsterdam Treaty, a European Base for Disability Legislation

The Maastricht Treaty (formally, the Treaty on European Union, TEU, was signed on 7 February 1992 in Maastricht, Netherlands after final negotiations in December 1991 between the members of the European Community and entered into force on 1 November 1993 under the Delors Commission) does not take hold of the issue of disability. It was only in the Amsterdam Treaty (of 2 October 1997, entered into force 1 May 1999) that some changes were made when the issues of disability were for the first time taken into account in the context of the general clause of non-discrimination.

The Treaty imposes on the member countries and on the Community institutions the obligation to combat discrimination of people with disabilities. Article 13 reads:

Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The Article 13 is emphasized with a declaration regarding persons with a disability. It provides for measures to combat discrimination based on disability. The Intergovernmental Conference that drew up the Treaty of Amsterdam sought to offer an even stronger guarantee by including a declaration in the Final Act, stating that the Community institutions must take account of the needs of persons with a disability when adopting measures to approximate Member States' legislation (The European Commission, 2006, a10000).

1.5.3.3. Nice Treaty, a Key Stone in the European Social Inclusion Policy

The Nice European Council adopted Nice Treaty in December 2000 which then becomes a key stone in the European social inclusion policy (European Disability Forum and University of Athens, 2002).

The conclusions of the Nice European Council underlined the need for policies on employability and emphasised the priority of increasing participation in employment (Nice European Council, 2000):

An approach of this kind presupposes in the first instance an increase in the level of participation in the employment market, especially by groups that are underrepresented or disadvantaged in it. More and better jobs are the key to social inclusion. More accessible labour markets should be promoted. And diversity in employment as a productive factor and a factor for social integration should be encouraged (European Social Agenda, Modernising and improving the European social model, Article 10).

Furthermore the Nice European Council put forward following terms in fighting against exclusion and discrimination to promote social integration (Nice European Council, 2000):

Ensure effective implementation of Community legislation on combating all types of discrimination on grounds of gender, race or ethnic origin, religion or beliefs, disability, age or sexual orientation. Develop exchanges of experience and of good practice to strengthen these policies” (Annex I, European Social Agenda, Future orientations: III. Fighting Poverty and All Forms of Exclusion and Discrimination in Order to Promote Social Integration, Item (f).

The Nice Summit provided the political basis for the consolidation of a Social Agenda in Europe. It accomplished this by reinforcing ‘the modernisation of the European Social Model’ and emphasising the ‘indissoluble link between economic performance and social progress’. The synergy of the trinity: (1) Democracy, (2) Economy and (3) society constitute the new philosophy of the European Social Model. It was agreed that a new, “Open Method of Coordination” should be established among the Member States (European Disability Forum and University of Athens, 2002).

1.5.3.4. Transition period and supported employment in the EU

The concept of transition from school to employment or working life is referred to by several international documents. The Salamanca Framework for Action (UNESCO and Ministry of Education and Science, 1994) states that:

...young people with special educational needs should be helped to make an effective transition from school to adult working life. Schools should assist them to become economically active and provide with the skills needed in everyday life, offering training in skills, which respond to the social and communication demands and expectations of adult life ... (p. 34).

The main problems faced by young people with special needs, their families and professionals are the transition from school to employment. Transition is a process that must be supported by the existence and implementation of legislation and policy measures. The EU social policy implications are rich for transition period and supported

employment issues. They are the bounding elements and the projection of chapters in this study. However the transition to employment is part of a long and complex process (Soriano, 2006). Therefore its detailed form is beyond the scope of this study.

The purpose of Supported Employment programmes is to provide support so that people with a disability who face substantial barriers to employment facilitates this process. These barriers may appear as a result of their disability. So, in Supported Employment programmes they can work in the career they preferred.

1.6. Social Indicators on Disability

It is quite a difficult effort to map the situation of all disabled people throughout Europe. Definitions and criteria for disability vary according to policy objectives, legislation and administrative standards (European Commission, 2002). A study was conducted namely Definitions of disability in Europe: A Comparative Analysis (European Commission, 2002) for this purpose. Population surveys provide subjective data, affected by differing cultural perceptions in individual Member States (People are asked to report whether they consider they have a Long Standing Health Problem or Disability- LSHPD). In addition, data focus on the working age population, and exclude children and people living in institutions.

However, the EU system of harmonised methodology for data collecting (Commission Regulation 1566/2001 of 12/07/2001), used by the European Statistics on Income and Living Conditions (SILC) and the European Labour Force Survey (LFS) 2002 ad hoc module on disability (Eurostat statistics in focus, Theme 3-26/2003) allow valuable measurement of progress.

Some 44.6 million people aged between 16 and 64 consider themselves to have a long-standing health problem or disability (LSHPD) (European Labour Force Survey (LFS) 2002 ad hoc module on disability), representing around 16% of the overall EU working age population. These figures do not distinguish between disabled people and those with a long standing health problem. Moreover, they should be treated with caution: they are survey-based and not on administrative data. For their part, disabled

people, with carers and service providers, make up a significant economic part of the population and many disabled people have the ability to work, hence the crucial importance of work situation adjustment (Börsch-Supan & Jürges, 2005).

There is a strong correlation between disability and increasing age. In 2002, nearly 30% of people in the age group 55-64 reported an LSHPD (LFS 2002 ad hoc module on disability). It places new demands on family units and raises pressing questions about the efficiency and management of care and support services for disabled people, including older disabled people and people with long standing illness. Moreover, the Share survey shows that disability schemes affect early retirement (Börsch-Supan & Jürges, 2005). This calls for disability actions to further support labour force participation and promote active ageing, notably to prevent early retirement.

Figures also indicate a gap between the employment rate of disabled and non-disabled people: in 2003, 40% of people were employed compared to 64.2% for non-disabled (Kok, 2003). The ratio for people whose relatively light level of disability does limit daily life was 50% (Eurostat statistics in focus, theme 3-26/2003). Altogether, less than half of disabled people are employed. This relatively low rate of employment shows that unemployment among disabled people is a real concern.

Disabled people has twice the inactivity rate that of non-disabled people, indicating both low levels of reintegration following LSHPD, and comparatively low educational and vocational training levels. This high inactivity has reasons vary between countries. Major disincentives rise from benefit traps and risks of losing benefits on starting work. The reluctance of employers to recruit disabled workers could be counted as another possible reason for fear of having to make expensive workplace adjustments.

Nonetheless, 43.7% of respondents believe they could work with adequate assistance. While these figures vary between Member States, and also according to the type of work, only 15.9% of disabled people who need assistance to be able to work actually receive it. Demographic forecasts suggest that the proportion of working-age population in total population is falling in Europe. Making full use of the available working population, including disabled people is more important than ever in the present situation of Europe (Börsch-Supan & Jürges, 2005).

Finally, statistics in all Member States show a correlation between the prevalence of LSHPD, and the level of education. Disability at birth or during childhood/teenage might limit the possibilities for studying. It is also possible that people with a low level of education have non qualified jobs in dangerous environment. It is not yet possible to state whether one of these effects is more important than the other or whether they cumulate (Börsch-Supan & Jürges, 2005).

1.6.1. Education Level of the People with Disabilities

Education is one of the key elements of the European Social Inclusion Strategy. Member States try to promote measures that allow active accession of the people at risk of exclusion to education in order to prevent life crises leading to social discrimination such as exclusion from schools. Disabled people have limited access to second and third level of education when compared to the ones without disabilities. It should also be pointed out that there are a high percentage of dropouts of disabled students particularly at secondary school level. The following diagrams give crucial results of the study research of the European Disability Forum realized with the University of Athens and eight disability organisations in 2002 participated by seven European countries since they could ensure full comparability of their responses at a national level (European Disability Forum and University of Athens, 2002).

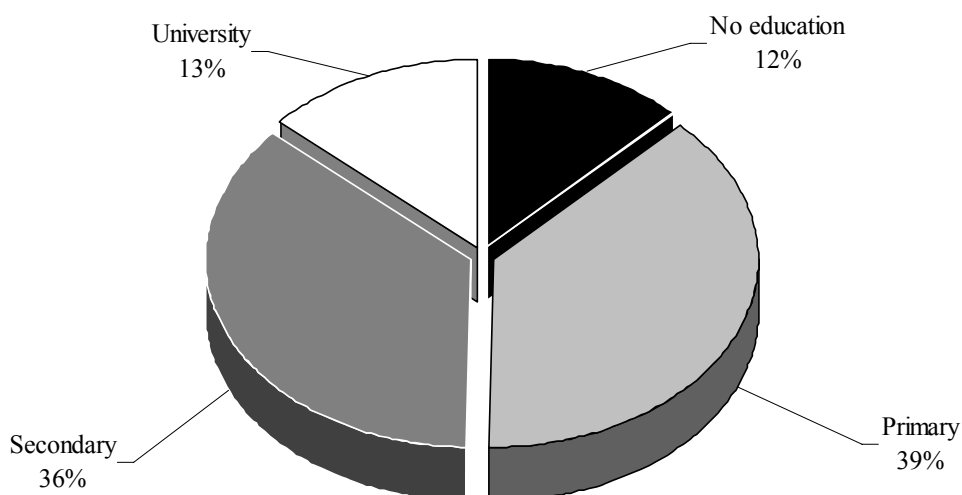


Figure 1.2. Education Level of the Disabled Group in certain EU Countries

Source: European Disability Forum and University of Athens (2002). *Disability and social exclusion in the European Union: Time for change, tools for change*, Final study report, p. 27.

1.6.2. Participation of Children with Disabilities in Education

Inclusive education is a process which integrates the disabled children with the non-disabled students by way of individualized education programmes arranged according to the Special Educational Needs (SENs) of the students with disabilities. Therefore inclusive education should be seen as an important field of educational services and certain actions should be taken for this process to be executed. No matter how good the quality of the special education given to the disabled children is, it will be in vain from all aspects unless it opens the way for social inclusion or socialisation and bring about social acceptance of the individual in vital aspects of life such as working life and education (European Disability Forum and University of Athens, 2002).

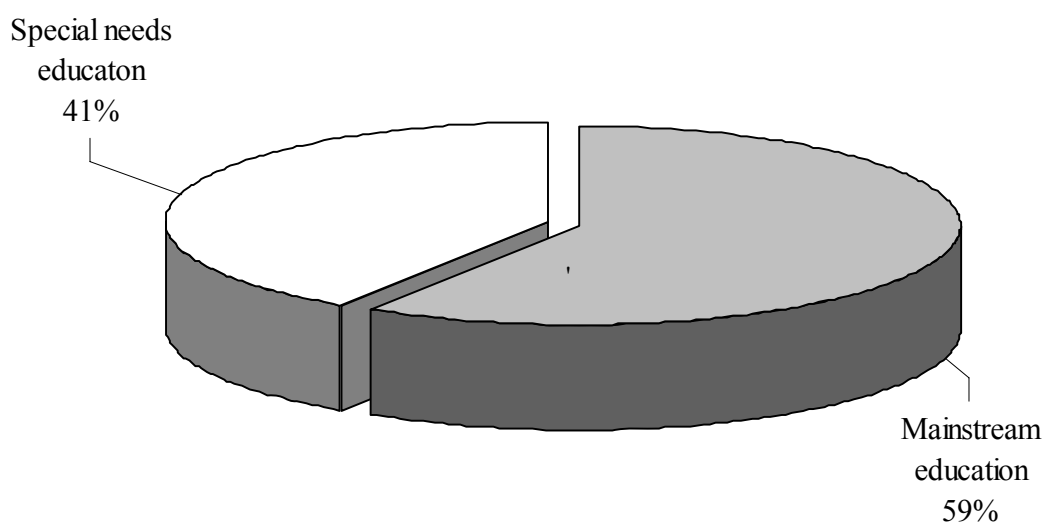


Figure 1.3. Participation Rate of Children with Disabilities in Education in EU

Source: European Disability Forum and University of Athens (2002). *Disability and social exclusion in the European Union: Time for change, tools for change*, Final study report, p. 27.

General principles of the inclusive education enable the disabled children to have equal opportunities with that of the non-disabled no matter what the type and extent of the disability is. It is fundamental to start the inclusive education in the early years of education and individual differences should be considered in the first place and the

cooperation of the family, school and environment carries great importance for the execution of this process (European Disability Forum and University of Athens, 2002).

1.6.3. Employment of People with Disabilities in the EU

Disabled people are at a high risk of unemployment and have a long-term dependence on welfare benefits. Findings indicate that 21% of disabled people are unemployed and around 42% of them are dependent on disability benefits (European Disability Forum and University of Athens, 2002).

Employment of disabled people in employment is important from many points of view, namely: (1) income, (2) a sense of belonging to the community, (3) bringing a contribution to society, and (4) the individual's social status (European Disability Forum and University of Athens, 2002).

Figure below reports the reasons of unemployment of the disabled people in EU.

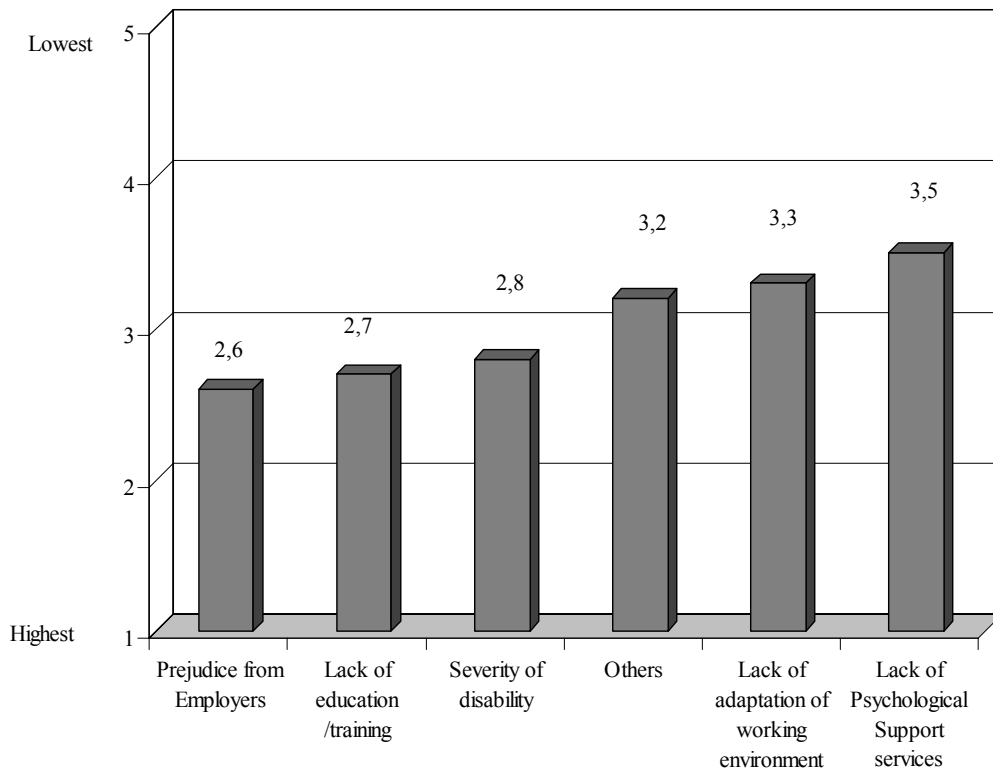


Figure 1.4. Main reasons of unemployment of the disabled in the EU Countries

Source: European Disability Forum and University of Athens (2002). *Disability and social exclusion in the European Union: Time for change, tools for change*, Final study report, p. 33.

The prejudice of employers, the lack of education and training, the severity of their disability, the lack of adaptation of the working environment, and the lack of psychological support services (in importance respectively) are the main reasons of being unemployed. The existence of “benefit traps’ preventing them to access part or full time employment, without losing their necessary income support formed the most important reason in the ‘other’ category of being unemployed (European Disability Forum and University of Athens, 2002).

A further investigation is needed for the economic status of employed disabled people according to their salaries.

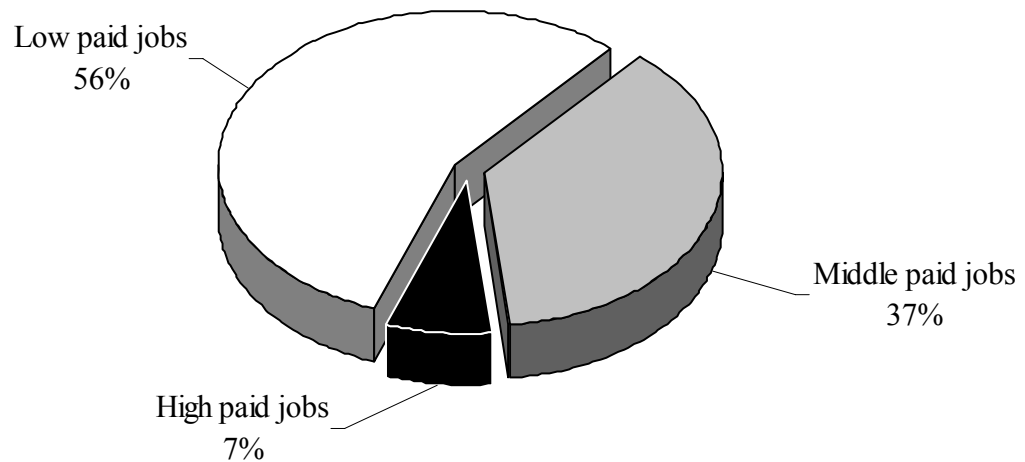


Figure 1.5. Categorisation of employed people with disabilities in the EU countries by level of salary

Source: European Disability Forum and University of Athens (2002). *Disability and social exclusion in the European Union: Time for change, tools for change*, Final study report, p. 33.

In this investigation, according to their salaries, it is found that 57% of disabled workers were placed in the low paid jobs category. This rate is quite a low rate. It could be read from the above figure that only 7% of disabled people were employed in a high paid job.

1.7. Disability Issues in Turkey

This section of the study starts with studying the Turkish Disability Act Law No: 5378 of 1/7/2005 (Law on Disabled People and on Making Amendments in Some Laws and Decree Laws). It then proceeds with employment requirements for the people with disabilities, the transition period and supported employment, and presentation of social indicators on Disability in Turkey.

1.7.1. Turkish Disability Act -Law No: 5378 of 1/7/2005 (Law on Disabled People and on Making Amendments in Some Laws and Decree Laws)

In accordance with the Article 1 “the objective of this Law is to prevent disability, to enable the disabled people to join the society by taking measures which will provide the solution of their problems regarding health, education, rehabilitation, employment,

care and social security and the removal of the obstacles they face and to market he necessary arrangements for the coordination of these services”.

Article 14 states the employment issues as:

During the employment no discriminative practices can be performed against the disabled people in any of the stages from the job selection, to application forms, selection process, technical evaluation, suggested working periods and conditions. Working disabled people cannot be subjected to any different treatment than the other people with respect to their disability such that it could cause a result which is unfavourable for the disabled people.

In accordance with the education and training section article 15 states that:

the right of education of the disabled people cannot be prevented by any reason. The disabled children, youngsters and adults are provided with equal education with the non-disabled people and in inclusive environments by taking the special conditions and differences into consideration. Education expenses of disabled people will be paid by Ministry of National Education. Disabled Students Counselling and Coordination Centre will be established. “Turkish Sign Language” will be developed.

The Turkish Disability Law prevents and prohibits all kinds of discriminative attitude towards people with disabilities. Provision of equal opportunities both in employment and education fields are the priority areas of interest. Prevention of disability, removal of barriers, promotion of personal dignity, solving the problems of the disabled people face in everyday life, supporting the independent living of people with disabilities and promotion of accessibility are the main objectives of the Turkish Disability Law.

Other Important Features of the Turkish Disability Law:

Some of the important concepts in the Turkish Disability Law have been depicted in followings (Republic of Turkey, Prime Ministry, Secretariat General for EU Affairs, 2006):

Fiscal Provisions: According to the related Law, welfare salary for severely disabled people is increased from 40 Euros to 120 Euros and welfare salary for

unemployed disabled is 80 Euros. Assistive devices/computer programmes are free of VAT and Real Estate Tax will not be charged on disabled people.

Care: Definitions and types of care are defined in the law. Disability related care expenditures of disabled persons who are not under social security are covered by General Directorate of Social Services and Child Protection.

Accessibility: All public buildings and physical environment will be made accessible for people with disabilities in the seven years following the enactment of the related act. All municipalities will take necessary measures. Metropolitan municipalities will establish “disability service units”.

Health: The law puts a special importance on early diagnosis and early intervention. According to the law, preventive health services will enhance to hereditary diseases causing disability. It foresees production license of assistive devices. It adopts the disability criterion based on the International Classification of Functioning (ICF). It defines People with Disabilities (PWD) operationally as having a disability degree of at least 40 % and documented by The Health Board (Republic of Turkey, Prime Ministry, Secretariat General for EU Affairs, 2006).

Independent Living: Disability Law supports independent living. However, there is not any training programme for independent living in Turkey yet.

1.7.2. Employment Requirements for the People with Disabilities in Turkey

In accordance with the Labour Law and Civil Servants Law, active participation is promoted by quota system both in private and public organisations. Private and government funded agencies and organisations employing at least 50 workers are obliged to employ disabled employees in parallel with their working capacity in the following scheme (Republic of Turkey, Prime Ministry, Secretariat General for EU Affairs, 2006):

- 3 % regarding Civil Servants Law
- 4 % regarding Labour Law.
- Grant system is based on contribution from employers.

Turkish Treasury pays 50 % of total amount of employer's share of insurance premium as an incentive, in case the employer recruits more disabled people than the legal requirement, employees with more than 80% degree of disability or recruits employees despite he/she has no such legal obligation.

1.7.3. Transition Period and Supported Employment in Turkey

There are no specific programmes to ensure transition period between school and the first job in Turkey. Turkish Employment Organisation itself finds jobs for its vocational training graduates. There is no legal basis for supported employment in Turkey. The Ministry of National Education is the main responsible body for Vocational training centres, occupational centres, and training, and practicing schools. The Ministry of National Education arranges vocational courses, in occupations that are needed in working life, for persons who need protection and special education. Turkish Employment Organisation arranges vocational courses that suit the capabilities of the disabled people considering the type of disability. These courses are generally based on handicraft, ready-made, knitting and computer (Republic of Turkey, Prime Ministry, Secretariat General for EU Affairs, 2006).

1.7.4. Social Indicators on Disability in Turkey

The world prevalence rate for impairments was estimated by World Health Organisation (WHO) in 1978 and this figure of disability rate is between 10% and 14% of the whole population. In parallel with the global changes, considerable steps have been taken recently in Turkey in the field of special education. In order to overcome the subject of insufficient data and literature about disability "Turkey Disability Survey" was conducted under the auspices of the Administration of People with Disabilities. According to the results, the proportion of the disabled population to the general population is 12.29% which means that there are approximately 8.500.000 people with disabilities. 1.158.000 of the disabled population is under 18 years of age and in need of education. There are 603,840 people with disabilities who are under 15 years of age. Nearly 1 million is over the age of 65 and the age of approximately 40.000 is unknown. The rest of 6, 7 million people can be considered as potentially productive for the society.

12, 69% of the urban population is disabled while this rate is 11, 67 % in rural areas where some essential services are difficult to provide (Turkey Disability Survey, 2002).

Marmara is the region with the highest disability rate of 13, 13%. Black Sea follows Marmara region with almost 13, 00 % disabled person rate. South eastern part of the country has the lowest disability rate of 9, 90%. However, this rate is due to lack of information, lower level of education and awareness (Turkey Disability Survey, 2002).

It is worth to note that 36, 33% of the total disabled population cannot read and write and most of them live in rural areas (43, 44%). 75 % of the people having chronicle illnesses have the skills to read and write (Turkey Disability Survey, 2002).

Among the disabled population with physical, visual, hearing, speech and intellectual impairment, 40.97% are graduated from primary school, 5.64 % from secondary school, 6.90 % from high school and 2.42 % have a university degree. These rates are much lower in rural areas compared to urban areas and decreases considerably in the university level. 4, 23% of the disabled populations with chronic illnesses have a university degree (Turkey Disability Survey, 2002).

The labour force rate of persons with disabilities over age 12 is 22.19% and 77.81% is not involved in any labour force (Turkey Disability Survey, 2002).

According to Existing Situation Report on Persons with Disabilities in Turkey of 1997, the labour force participation levels among persons with disabilities are not high (Japan International Cooperation Agency Turkey Office (JICA), 2005). In Turkey, 21, 71 % of physically, visually, hearing, speech and intellectually impaired persons participate in the labour force. 78, 29 % do not participate in any labour force. A rate of 19, 75 % (15, 46% of physically, visually, hearing, speech and intellectually impaired persons and the rest is people with chronic illnesses) of those who could not participate in the labour force is unemployed. On the other hand, 22, 87 % of people having chronic illnesses participate in the labour force where 77, 13 % do not participate in the labour force in Turkey. 13, 96 % (10, 77 % includes the people having chronic illnesses) of those who could participate in the labour force is unemployed.

1.8. Harmonisation of the Turkish Disability Policy with the EU Acquis

Harmonisation process of the Turkish disability policy with EU acquis has been studied under two sub-headings in this section. The first sub-heading is related to Turkish projects on disability in parallel with EU legislations, and the other one is related to the future plans of Turkey on disability issues.

1.8.1. Turkish Projects on Disability in Parallel with the EU Legislations

In regard to six legislations of the European Council, the Turkish projects, operations and activities are depicted below (Republic of Turkey, Prime Ministry, Secretariat General for EU Affairs, 2006).

Prime Ministry Administration for Disabled People has just started the preparation process in cooperation with Ministry of Interior and local authorities in accordance with 98/376/ EC: Council Recommendation of 4 June 1998 on a parking card for people with disabilities.

The works done by Turkey in regard to the Council Resolution of 5 May 2003 on Equal Opportunities for Pupils and Students with Disabilities in Education and Training (2003/C 134/04) has been studied under a separate heading in this study (3.5.5. Equal Opportunities for Pupils and Students with Disabilities in Education and Training, (Council Resolution 2003/C 134/04)). Turkish projects held in this regard are briefly as follows: (1) The Free Transportation Opportunity for Student with Disabilities Project, (2) The Socrates Grundtvig 2 Learning Partnerships Project "It's All in the Mind", (3) The Guidance of Web Accessibility for people with disabilities, and (4) Publication of Journal of OZ-VERI (Published by Prime Minister Administration for Disabled People).

In respect to the Council Resolution of 6 May 2003 on accessibility of cultural infrastructure and cultural activities for people with disabilities (2003/C 134/05) a "Barrier Free" Campaign has started in coordination with Administration for Disabled People and Turkish Radio and Television Broadcasting Agency. The objectives of this campaign were to raise awareness of the community, to change negative attitudes

towards people with disabilities, to prepare the Travel Guidebook for People with Disabilities and Aged People and to ensure accessibility of cultural activities and participation into social life. This campaign is conducted in cooperation with Ministry of Culture and Tourism, Administration for Disabled People, Association of People with Spinal Cord Injuries, Association of Turkish Travel Agencies, and Foundation of Alzheimer (Republic of Turkey, Prime Ministry, Secretariat General for EU Affairs, 2006).

Vocational Rehabilitation and Sheltered Workshops Project “Rainbow” to be implemented in 30 industrialized cities is carried as per in accordance with the Council Resolution of 17 June 1999 on equal employment opportunities for people with disabilities (1999/C 186/02). The objectives of this project are (1) to attain qualifications and skills required at work, (2) to access to vocational guidance and placement services, (3) Multiprogramming Special Education Centres will be established in 19 cities and (4) new centres will be established in 11 cities in 2007 (Republic of Turkey, Prime Ministry, Secretariat General for EU Affairs, 2006).

Council Resolution of 15 July 2003 on promoting the employment and social integration of people with disabilities (2003/C 175/01) is held under The Socrates Grundtvig 2 Learning Partnerships Project “The Systems of Integration of People with Disabilities into Labour Market”. The objectives of this project are (1) to share experiences in this field, (2) to obtain up-to-date information about employment practices of people with, and (3) disabilities in different countries in terms of integration of them into labour market (Republic of Turkey, Prime Ministry, Secretariat General for EU Affairs, 2006).

Four distinctive Turkish projects are prepared for Council Resolution on 6 February 2003 “e-Accessibility” improving the access of people with disabilities to the knowledge based society. (I) National Database for People with Disabilities project is one of them. The objectives of this project are (1) to coordinate activities of related governmental agencies serving disabled people, (2) to collect information for the database, (3) to share relevant information with the citizens and the related parties in an interactive way, and (4) to limit the repetitive services and support. (II) 183 Hot Line for

Social Services and People with Disabilities is also put into operation with the same resolution. The objectives of this operation are (1) to provide information to people with disabilities, (2) to prepare database from the hot line's callers, and (4) to analyze major issues people with disabilities face with. (III) Another project "The Portal of National Newborn Hearing Screening Project" carried in parallel with this resolution is done in cooperation with: Administration for Disabled People, Ministry of Health, Dokuz Eylül University, Gazi University, Hacettepe University and Marmara University. The objective of this project is to do early diagnosis of hearing impairment on newborns in 24 cities and 34 hospitals (as from 2004). (IV) One more project "Research and Projects Data Bank of People with Disabilities" is carried out in terms of the same resolution with objectives: (1) To collect all kinds of research and projects in order to facilitate the lives of the disabled people, and (2) To provide access to this database by relevant bodies including governmental institutions, social partners and NGOs (Republic of Turkey, Prime Ministry, Secretariat General for EU Affairs, 2006).

1.8.2. Turkey's Future Plans on Disability

The following plans are declared by Turkey to be executed for future disability issues (Republic of Turkey, Prime Ministry, Secretariat General for EU Affairs, 2006):

- Preparation of a Guideline (TS 9111 The Standards of Building Arrangement for People with Disabilities) in 2006.
- Preparation of a Strategic Plan on Improving Administration Capacity of Administration for Disabled People in the framework of Public Administration Reform in 2007.
- Implementation of the Model of Social Rehabilitation Centre for People with Chronicle Mental Disorder in İstanbul at the end of 2006.
- Organisation of REHACARE International Care and Rehabilitation Days together with REHACARE INTERNATIONAL in 1-3 September 2006.
- In terms of International Classification of Functioning (ICF), Administration for Disabled People together with the ICF team from World Health Organisation will meet in 2007. In this meeting, the practitioners who are responsible for

giving The Health Board Reports will be informed about how to use ICF on their works.

- The Administration for Disabled People in cooperation with Istanbul Metropolitan Municipality will establish The Model of Independent Living Centre in Sarıyer/Istanbul for severely disabled people in 2007.
- Within the context of 2007 European Year of Equal Opportunities for all, and the 10th year celebration of the establishment of Administration for Disabled People, “Discrimination against People with Disabilities Conference” will be arranged by the Administration for Disabled People in May 2007.

In this first chapter of the study disability issues are held. The connection between the definition of disability with social model and the connection between social model and social policy were put forward. The connection and harmonization of disability issues of the EU and Turkey were studied by covering their legislations and social indicators due to the applications. Disability issues could be based on the works presented in the first chapter. The next chapter studies the disability anti-discrimination issues.

CHAPTER II

2. DISABILITY DISCRIMINATION

The second chapter of the study is devoted to the discrimination issues of the disabled. Concept of discrimination and its place in the EU law and policy are the first topics covered in this chapter. The chapter also studies the EU's future plans on disability, especially the EU Disability Action Plan. It also underlines the leading role of the High Level Group on Disability in realisation of these plans. Mainstreaming issue in disability policy of Turkey has been studied as the final topic in this chapter.

2.1. Concept of Discrimination

To discriminate means to differentiate or to treat differently when there is no relevant difference between two persons or situations, or to treat in an identical way in situations which are in fact different. The two anti-discrimination Directives prohibit both direct and indirect discrimination and provide the same definition of discrimination (European Commission, 2006, Unit G.4).

Direct discrimination has occurred if one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds on which discrimination is prohibited. The problem in establishing that direct discrimination has taken place is that it is not always easy to identify the 'correct comparator'. One needs to find someone whose situation one can compare to the situation of the person who claims to be a victim of discrimination. Only if these are in the same or similar situations can the comparison take place. Sometimes it will be impossible to identify an available actual comparator, and a case can then be made for a hypothetical comparator. This should build on the treatment of a real person without the relevant characteristics (e.g. someone from mainstream as opposed to minority) in slightly different circumstances. However, once it has been established that two people in the same or similar situation have been treated differently, it would be hard to show that this difference was permissible. The Directives provide for certain narrowly and precisely drawn exceptions. These include genuine occupational requirements, positive action, and

reasonable accommodation for disabled persons and specified exceptions for age discrimination. For example, if an employer denies a worker a pay rise because of the worker's sexual orientation, and another worker in the same situation is given the pay rise, it is likely that this would constitute discrimination in violation of Employment Framework Directive (2000/78/EC). However, if a worker is denied a pay rise due to his age, this might be permissible under Article 6, which allows Member States to provide that differences of treatment on grounds of age shall not constitute discrimination if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary. Such differences may, according to the Directive, include the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment (European Commission, 2006, Unit G.4).

The Directives also prohibit indirect discrimination. Indirect discrimination occurs where an apparently neutral provision, criterion or practice would put persons belonging to a protected group at a particular disadvantage compared with other persons. This is so unless the provision, criterion or practice in question is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. As with direct discrimination, identifying correct comparators can be difficult. The permitted legal justifications must be applied rigorously. The Directives also provide that harassment is a form of discrimination. Harassment is defined as unwanted conduct related to the grounds on which discrimination is prohibited with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment, intended or not. As is clear, the definition of harassment includes a wide range of unwanted conduct. When making an assessment of whether harassment has taken place, a comparator does not need to be identified (European Commission, 2006, Unit G.4). The Directives further state that an instruction to discriminate should be considered as a form of discrimination and is prohibited.

Finally, the Directives include victimisation under the list of prohibited acts. The Member States need to put in place measures that are necessary to protect individuals from any adverse treatment (such as dismissal) as a reaction to a complaint or

proceedings aimed at enforcing compliance with the principle of equal treatment. It is important that not only the person who has been discriminated against is protected, but also those who provide evidence as part of a discrimination complaint, or are involved in some other way in the complaint (European Commission, 2006, Unit G.4).

Several states provide financial support to employers to pay for accommodations for disabled employees. This financial involvement may serve to facilitate acceptance of anti-discrimination legislation by employers. Conversely, the existence of anti-discrimination obligations may encourage employers to receive publicly-funded accommodation measures, which otherwise may suffer from receiving low take-up (European Commission, 2002, CE-V/5-02-004-EN-C).

However, the relationship between anti-discrimination legislation and social policy is not necessarily entirely symbiotic. Difficulties may arise because different institutions, with different values and assumptions, are involved in administering the two spheres of intervention. Other possible conflicts between anti-discrimination principles and social policies can also be imagined. Quota systems could be challenged for using definitions of disability which are discriminatory (quota definitions often exclude, or give low ratings to, mental illnesses, for example). However, it is arguable that transposition of the FETD should not result in conflicts between anti-discrimination law and social policy. There are several reasons for this. First, the Directive explicitly excludes from its scope social security, social protection, and 'any kind of payment by the State aimed at providing access to employment or maintaining employment'. Second, Article 7 explicitly permits positive action, although this action should be 'with a view to ensuring full equality in practice' by preventing or compensating for disadvantages on the specified grounds (e.g. disability). Third, commentaries on the FETD suggest that it is intended to implement an 'individual merit' approach to equality, although one which lies at the 'equality as fairness' end of the spectrum. The FETD does not require Member States to introduce measures to achieve equality of results (European Commission, 2002, CE-V/5-02-004-EN-C).

2.1.1. Relationship of Disability with Discrimination

The relationship of disability with discrimination has been studied in this section from employment point of view. A general framework for equal treatment in employment and occupation and outlawed discrimination based on religion, belief, disability, age and sexual orientation (the 'framework equal treatment directive', FETD) was established by the EU by issuing a Directive (Council Directive 2000/78/EC) in November 2000. Anti-discrimination policy is a relatively new type of regulatory policy. Existing anti-discrimination measures are overviewed. The place of anti-discrimination policy in other policies, to combat the obstacles that disabled people may face in entering and retaining employment is examined (Anti-discrimination policy may extend in scope beyond employment, but employment is focused here as the FETD is confined to employment).

The FETD does not contain a definition of disability. There are examples in the Member States of general prohibitions on discrimination (in national constitutions, for example) where disability is mentioned but not defined. However, the examples discussed here, of more specific and detailed laws against disability discrimination, do contain definitions. They range from broad definitions encompassing minor disabilities to narrower specifications around 'substantial' limitations. Different definitions are linked to the different conceptions of equality implicit in anti-discrimination legislation (European Commission, 2002, CE-V/5-02-004-EN-C).

Despite the huge differences in the labour force participation of older workers (labour force greying) between European countries, there is a common trend to be distinguished. The decrease in the labour force participation rate can be explained by the introduction of new (early) retirement schemes and furthermore the disability benefits schemes. These are also quite frequently used as an exit route into early retirement. The disability and unemployment insurance schemes have functioned as informal early retirement schemes as well (Leo-Cresep, 2000). Main exit routes from the labour market are early retirement, insurance on disability, unemployment, non-participation, etc. (Leo-Cresep, 2000). These exit routes have made the option for an offer older workers can and will not refuse (Leo-Cresep, 2000).

2.1.2. Discrimination and Conceptions of Equality

There is considerable ambiguity in the general literature on disability discrimination about whether anti-discrimination law is primarily intended to protect people whose work performance (productivity) is not limited, or only trivially limited, by their condition, or whether people who are substantially limited in what they can do are also seen as potential beneficiaries of the law. This ambiguity reflects different conceptions of equality (European Commission, 2002, CE-V/5-02-004-EN-C).

There are two broad conceptions of equality which are clear alternatives, and clearly imply different definitions of disability (European Commission, 2002, CE-V/5-02-004-EN-C):

i) **Equality of Opportunity:** Equality of opportunity is oriented towards individual merit, in the sense that it aims for equality in the opportunities of individuals to work according to their abilities. This conception is most relevant to disabled people whose productivity is unimpaired and whose opportunities are currently limited by stigma and stereotyping. The individual merit approach suggests that the definition should encompass minor impairments, medical conditions which are not substantially limiting in their effect on a person's activities, and perceived disabilities. It is arguable that no definition at all is needed for the individual merit conception, as the central issue is whether the person has been discriminated against.

ii) **Equality of Results:** By contrast, a conception oriented to equality of results, envisaging on elements of redistribution and positive action would appear to offer more to those who have substantial limitations. The equality of results approach suggests a definition nearer in conception to those found in social policy, which would target a different group of people with substantial limitations.

Although these conceptions are clear alternatives to each other there are ambiguities in application. These ambiguities arise from two sources. Firstly, a spectrum of tests for discrimination within the equal opportunities/individual merit approach can be found. At one end of the spectrum there is 'equality as mere rationality' where arbitrary and unreasonable behaviour is deemed discriminatory, but justifications for

discrimination are accepted at face value. At the other end of the spectrum there is 'equality as fairness', where justifications are examined critically, the possibility of indirect discrimination is recognised, and burdens of proof may be shifted. Many persons commenting on the subject, argue that reasonable accommodation for disabled people comes within an 'equality as fairness' conception of the scope of anti-discrimination law. Others see accommodation as a form of positive action. The purposes of discussion here and focusing on definitions are for the central question 'whether a right to accommodation is consistent with a broad definition of disability (or no definition)' or 'whether the right has to be confined to a narrowly-defined group of people' (European Commission, 2002, CE-V/5-02-004-EN-C).

The other source of ambiguity arises from the development of a third conception of equality which goes beyond the individual merit approach but avoids the explicit expressions of equality of results. This conception could be described as 'Radical Equality of Opportunity' as it argues for institutional and structural changes to remove the barriers to equal participation for disabled people. It involves the creation of positive duties on employers to promote equality, for example by reviewing employment practices, workplace organisation, etc. It is not clear what definition of disability should accompany this conception. Among the anti-discrimination policies of the European states, there are some examples of policies which conform to this conception. However, they are group-oriented policies which do not rest on the establishment of individual rights of litigation. Therefore, they do not require the definition of particular individuals as disabled (European Commission, 2002, CE-V/5-02-004-EN-C).

2.1.3. Other Related Concepts in the Directives

Besides the disability discrimination concepts covered in the above sections, there are further important concepts to be studied. This section of the study covers the concepts like exceptions, positive action, accommodation for disabled people, legal standing and dialogue with civil society, and dissemination of information, reporting, and sanctions.

Exceptions

There are limited exceptions to the prohibition of discrimination in the Directives. As the purpose of the Directives is to provide a framework for combating discrimination, the Directives permit discrimination only very exceptionally and only where certain tests are satisfied.

Genuine Occupational Requirement: For all prohibited grounds the Directives permit an exception to meet genuine occupational requirements. Thus, an employer may select a person for a particular post where, due to the nature of the work involved or the context in which it is carried out, it is a 'genuine and determining occupational requirement' that the person should have a characteristic related to racial or ethnic origin, disability, religion or belief, sexual orientation or age provided that the objective is legitimate and the requirement is proportionate. Applying a genuine occupational requirement in respect of one ground should not justify discrimination on any other ground.

Long-established assumptions about the type of person required to do a particular job may not meet the test of legitimate objective and proportionality. For example, an employer is unlikely to be able to demonstrate that to work as a receptionist a person must be 'young and energetic'; such a requirement is likely to be discriminatory on grounds of age and disability.

Positive Action

The Directives recognise that to achieve full equality in practice will require more than prohibiting current or future discrimination; therefore, they permit measures to prevent or compensate for the historic disadvantages suffered by groups defined by racial or ethnic origin, religion or belief, disability, sexual orientation or age. If particular groups have never been employed to do particular types of work, positive action could involve training people from such groups to prepare them for such work. It could also involve taking additional, planned, targeted steps when seeking to recruit new employees, publicising posts in different ways in order to encourage members of such groups to apply and offering support if necessary.

Accommodation for People with Disabilities

Providing reasonable accommodation for disabled people in their taking part in training or employment is a crucial concern. Article 5 of the Employment Framework Directive (2000/78/EC) requires employers to take appropriate steps where needed in a particular case, to enable a disabled person to have access to, participate in or advance in employment or to undergo training unless this would impose a 'disproportionate burden' on the employer. For example:

- To enable a deaf employee to undergo training, her employer could provide a sign language interpreter.
- After an accident at work a manual worker is unable to continue in his manual job; the employer could provide appropriate training and transfer him to an office job.
- A wheelchair-user replies to an advertisement for an administrative assistant. The address is on the 4th floor. If the employer has offices on several floors including the ground floor, the employer could arrange for the work of the administrative assistant to be done in the ground floor office and move another employee who is able to climb stairs to the 4th floor. If, however, the employer has offices only on the 4th floor and there is no lift, then there may be no reasonable measures (without disproportionate burden) the employer can take to enable this person to do this job.
- To enable a blind person who uses a guide dog to get to work more easily, the employer could change their working hours so they do not have to come in the rush hour.

An employer cannot claim that the burden, including financial burden, of providing reasonable accommodation for a disabled person is 'disproportionate' if funding or other assistance is available to assist employers in such circumstances.

Legal Standing and Dialogue with Civil Society

Both Directives provide that associations and organisations with a legitimate interest can support victims of discrimination or take legal action on their behalf (with

their approval). Criteria defining which organisations have a 'legitimate interest' are established by national law.

The Directives require Member States to promote dialogue with social partners to encourage workplace agreements, codes of conduct, etc. and with NGOs with a view to promote the principle of equal treatment.

Dissemination of Information, Reporting and Sanctions

The Directives require Member States to take measures to widely publicise both their existing laws on equal treatment and non-discrimination and any new measures they adopt to bring their laws in line with the Directives.

Member States must report to the EU on the application of the Employment Framework Directive (2000/78/EC) by 2 December 2005 and every five years thereafter.

In transposing the Directives, Member States must ensure there are sanctions for infringement of their national anti-discrimination laws and that these sanctions are applied. Sanctions for discrimination must be 'effective, proportionate and dissuasive'; that is, they should provide appropriate personal compensation (reparation) for the victim and should deter both the particular respondent and others from comparable acts of discrimination in the future. Sanctions may comprise the payment of compensation, for which no upper limits can be imposed.

2.2. The Concept of Discrimination in EU Law and Policy

The principle of non-discrimination is a general principle of the EU law. It is also expressly mentioned in a number of distinct contexts in the Treaties.

The EU Charter of Fundamental Rights was solemnly proclaimed in December 2000 and is as of yet not legally binding. It forms part of the new Constitutional Treaty, and if this Treaty is ratified by all 25 Member States, it will become binding. The process of ratification is going on across the EU. Article 21(1) of the Charter states:

Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

Further, Article 13 of the EC Treaty states:

Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

This is not a direct prohibition, but rather an empowering provision which enables the EU to take action against the forms of discrimination listed (see General Principles above). Prior to these developments, there was extensive EU legislation and case law on the prohibition of discrimination on grounds of nationality and gender.

The EU has, pursuant to Article 13, put in place a three-part strategy (two directives and one action program) to combat discrimination:

- A Directive to implement equal treatment irrespective of racial or ethnic origin (Council Directive 2000/43/EC)
- A Directive establishing a framework for equal treatment in employment and occupation on the grounds of religion or belief, disability, age and sexual orientation (Council Directive 2000/78/EC)
- The Community Action Programme 2001-2006 (Decision 2000/750/EC) to combat discrimination on all the grounds listed in Article 13 (other than sex).

The programme has three principal objectives:

- To assist in analysing and evaluating the extent and nature of discrimination in the EU and the effectiveness of measures to combat it;
- To help to build the capacity of the actors in the Member States of the EU and at European level who are active in the fight against discrimination;
- To promote and disseminate to practitioners and opinion-formers the values

and practices underlying the fight against discrimination.

The PROGRESS Programme 2007-2013 will bring together a number of existing European programmes in one heading, including the anti-discrimination programme. The nature of the existing programmes will remain largely unchanged.

2.2.1. Shift of the Burden of Proof and Evidence of Discrimination

Recognising the difficulty of proving discrimination, Article 10 of the Framework Employment Directive provides for the shift of the burden of proof as follows:

... when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

The shift of the burden of proof is closely linked to the importance of delivering effective judicial protection against acts of discrimination. However, the shift of the burden of proof which the Directives allow is not automatic. The responsibility of bringing proof does not shift as soon as a plaintiff (the complaining party) simply claims that s/he was discriminated against but only after s/he establishes facts from which it may be presumed that discrimination has occurred (European Commission, 2006, Unit G.4).

The Directives also refer to discrimination on grounds of racial or ethnic origin, religion or belief, disability, sexual orientation and age. There are many procedural instruments that can assist victims of discrimination to establish that discrimination may have occurred. Such instruments include testing, the use of statistics, video and audio recordings and the so-called questionnaire procedure. The Employment Framework Directive (2000/78/EC) expressly mentions in its preamble that statistics may be used in cases of indirect discrimination (European Commission, 2006, Unit G.4).

2.2.2. Non-implementation of the EU Law

Where a State which is a member of the EU has not provided for the full (and correct) transposition of a Directive into national law by the time the date for implementation has passed, an individual may nevertheless be able to rely on the provisions of the Directives before national courts. This is known as the principle of 'direct effect'. The troubled individual will have to show that the provision relied on is a precise and unconditional principle which is sufficiently operational to be applied by a national court and which is therefore capable of governing the legal position of individuals. However, it is generally held that the principle of direct effect applies only to complaints directed against a public body or 'emanation of the State'.

As such, in relation to litigation between private individuals or entities, Directives also have the so-called 'indirect effect'. As discussed above, States and in particular domestic courts are obliged to do everything possible to achieve the results outlined in the Directives. Indirect effect therefore requires domestic courts to interpret existing national law, as far as possible, in line with the Directive that should have been implemented.

It is ultimately for the ECJ to decide which terms of the anti-discrimination Directives have direct or indirect effect.

If a State fails to implement a Directive within the time frame provided, the State is liable for damage that this causes to the individual. The ECJ lists three conditions which are both necessary and sufficient to establish liability. These are:

- The rule that has been infringed should entail the granting of rights to individuals;
- The content of such rights must be ascertainable on the basis of the provisions of the Directive in question; and
- There must be a causal link between the breach of the State's obligation and the loss and damage suffered by the injured individual.

In addition, the breach of the EU law must also be sufficiently serious for the individual to be entitled to damages.

2.3. The EU's Future Plans on Anti-Discrimination

The Disability Action Plan in the enlarged European Union has been studied under this sub heading. Equality of opportunity is the objective of the European Union's long-term strategy on disability aiming the utilisation of the following rights (COM (2005) 604 Final, 28.11.2005):

- Dignity
- Equal treatment
- Independent living
- Participation in society and economy

First three of these rights mentioned above are elements in the set of common EU economic and social values, enabling disabled people to fulfil their capabilities.

The EU strategy is built on three pillars (COM (2005) 604 Final, 28.11.2005):

1. EU anti-discrimination legislation and measures, which provide access to individual rights
2. Eliminating barriers in the environment that prevent disabled people from exercising their abilities
3. Mainstreaming disability issues in the broad range of Community policies which facilitate the active inclusion of people with disabilities.

The EU Disability Action Plan (DAP) - made by the European Commission (COM (2003) 650 final, 30.10.2003) to ensure a logically consistent and ordered policy follow-up to the European Year of Disabled people in the enlarged Europe - provides a dynamic framework to develop the EU disability strategy (COM (2005) 604 Final, 28.11.2005).

The European Council acknowledged that the disability policies are essentially the responsibility of Member States, but Community policies and actions impact in many ways on the situation of disabled people (Council Conclusions of 1.12.2003 Council document 15 206/03). The council also recommended that Member States take full account of the DAP when developing national disability policies.

Commission of the European Communities put forward priority objectives and actions focusing on the active inclusion of people with disabilities for the second phase (2006-2007) of the DAP. On the basis of the Social Agenda for 2005-2010 (COM (2005) 33 final, 9.02.2005), it is necessary that the economic potential of disabled people and the contribution they can make to economic and employment growth must be further activated under the light of information on current demographic situation (COM (2005) 604 Final, 28.11.2005).

Commission of the European Communities urged Member States to promote inclusion of disabled people in their forthcoming Reform Programmes for growth and jobs in support of the refocused Lisbon strategy (COM (2005) 24).

2.3.1. Employment

Promoting employment takes an important part in the EU's future plans on disability. The first phase of the DAP focused on disabled people's accession to the labour market and to employability-related measures such as lifelong learning, information technology and access to the structural environment. As a result, progress has been achieved through actions at European level.

EU anti-discrimination legislation provides the legal framework for equal treatment in employment and occupation (Directive 2000/78 of 27 November 2000). The Employment Equality Directive (The Council of the European Union, 2000- the Equality and non-discrimination Annual report 2005) prohibits direct and indirect discrimination as well as harassment and instructions to discriminate on a number of grounds including disability (European Commission, July 2005). In addition, specific provisions exist to promote equal treatment for disabled people. Private and public employers and others, to

whom the Directive applies (such as training providers) must provide reasonable accommodation for people with disabilities. They must take appropriate measures to enable disabled people to have access to, participate in or advance in employment, or to undergo training. Effective implementation of this Directive is therefore the key to promoting employment for disabled people. This Directive introduces new legal concepts, so its implementation is challenging. Many Member States (including the 10 new Member States which joined the EU in May 2004) take steps to bring their laws into line with the Employment Equality Directive (2000/78/EC), banning discrimination in respect of employment and training on grounds of religion or belief, disability, age and sexual orientation (European Commission, July 2005).

Almost all the European Employment Strategy (COM (2004) 239 – C5-0188/2004 – 2004/0082 (CNS), Final A5-0277/2004, 19 April 2004) (2005/600/EC) concern the labour market situation of people with disabilities. In 2004, the Commission submitted a discussion paper “Disability mainstreaming in the European Employment Strategy, European Commission, Employment” (European Commission, 2005, EMPL/A/AK D (2005), EMCO/11/290605) to the Employment Committee analysing disability mainstreaming in the EES.

The Commission Regulation on State Aid employment (Commission Regulation (EC) No 2204/2002) enables Member States to create incentives for employers and sheltered workshops to recruit and retain disabled workers.

Through the EU social dialogue, the Commission encourages social partners, in particular at cross-industry level, to implement the recommendations made in their declarations on the employment of people with disabilities (UNICE, CEEP and ETUC, 1999; UNI-Europa Commerce and Euro Commerce, 2004). The 2004 report on social partners' actions mentions several initiatives related to disabled people (CEEP, UNICE/UEAPME and ETUC, 2004).

In education and training, the completed mandate of the working group on active citizenship, equal opportunities and social cohesion aims to produce policy recommendations and concrete material targeted at disadvantaged groups.

On the operational side, the Community Action Programme to Combat Discrimination support capacity building and raise awareness of disabled peoples' rights, for example in the new cycle of Commission policy conferences for the European Day of People with Disabilities. The European Social Fund (ESF) and other Community initiatives continuously support the integration of disabled people into the labour market.

2.3.2. Social integration

Integrating disabled people in society is another important topic in the EU's future plans on disability issues. The EYPD provided an impetus for progress in improved living standards, public awareness of fundamental rights and needs of people with disabilities. The Commission has contributed to improved accessibility with a broad range of initiatives, including pilot projects and studies.

Several projects co-financed by the Commission focus on knowledge exchange between building professionals and development of training tools (European Agency for Special Needs Education).

2.3.2.1. Accessibility

Accessibility problems concern specifically Persons with disabilities and older People, but also anybody in specific environmental or social situations. Solutions to overcome these issues are therefore very wide and can be grouped in 2 categories:

- Mainstreaming Accessibility in goods & services, in particular through Design for All.
- Developing up-to-date Assistive Technologies.

While accessibility is a wide concept, e-Accessibility deals mainly with aspects linked to the Information Society. e-Accessibility is one of the focuses of e-Inclusion. eAccessibility is now part of eInclusion in the third pillar of i2010. Previously, the eEurope 2002 eAccessibility targets gave impulse to many actions in this field, while the eEurope 2005 Action Plan moved them into a wider e-Inclusion horizontal action.

- All citizens have the right to benefit from new opportunities that the Information Society offers. People with disabilities and older persons sometimes experience difficulties in accessing these new technologies and services, as some barriers can be inadvertently created by the Information Society itself. Accessibility problems can also be created by specific environment or social conditions.
- On the other hand, Information Technologies and Services can greatly help overcome other environmental or social barriers, encountered by people with disabilities and older persons.

The Communication on eAccessibility (COM (2005) 425 final, on eAccessibility [SEC (2005) 1095], Brussels, 13.9.2005) promotes a consistent approach to eAccessibility initiatives in the Member States on a voluntary basis and foster industry self-regulation. In two years time, follow-up on the e-Accessibility situation will be made. The Commission may then consider additional measures, including new legislation if deemed necessary.

An initiative to harmonise at EU level the accessibility requirements for public procurement in the ICT domain through an EU standard is ongoing. Progress has been achieved in the implementation and testing of the Web accessibility guidelines as well on the European Curriculum on Design for All (Klironomos et al, 2005; 2003/C 39/03). The Special Needs sector projects have two clusters:

- (1) Intelligent Systems for Independent Living (ISIL)
- (2) Intelligent Assistive Systems (IAS).

Among all, DASDA (Dissemination Activity Supporting Design-for-All) project is of great importance. The DASDA project's main approach is to increase awareness and knowledge about Design-for-All among the key stakeholders. DASDA receives support from the European Commission as a part of FP5/IST/Systems and Services for the Citizen / Persons with special needs (including the elderly and the disabled).The developments of the information society offer enormous potential to citizens, including older or disabled people.

European research activities are structured around consecutive four-year programmes, or so-called Framework Programmes. The Sixth Framework Programme (FP6) sets out the priorities - including the Information Society Technologies (IST) priority - for the period 2002-2006. Essential information for participating in the IST priority is provided at below.

Some of the Information Society Technologies (IST) projects, within the priority context of 6th Framework Programme for Research, technological development and demonstration activities related to disability issues are listed below (Information Society Technologies (IST) (2005):

- AVANTI (Added Value Access to New Technologies and services on the Internet): The primary aim of the AVANTI project is to encourage inclusion, in the information society, of those people who cannot or think they do not want to be involved by developing an intelligent assistant, which can take over the interface to Internet services. Barriers to use such as language, disability and fear of technology will be addressed.
- CARE HERE (Creating Aesthetically Resonant Environments for the Handicapped, Elderly and Rehabilitation) will design, develop and validate aesthetically resonant environments for the handicapped, elderly and rehabilitation. The users will be working with handicapped children, the elderly in long term care and people undergoing rehabilitation in hospital or at home.
- The CYBERVOTE (An innovative cyber voting system for Internet terminals and mobile phones) project aims to contribute to the development of the European democracy by enabling all its citizens to use a modern electronic voting system. The goal is to increase the overall participation of European citizens to all kind of elections and more specifically to increase the participation of the young, physically handicapped people, immigrants and socially excluded people.
- The overall objective of ISCOM (Information Systems for Combined Mobility Management in Urban and Regional Areas) projects consists of the development and demonstration of multimodal transport information and services to raise quality of life in the daily experience and in mobility in general. Specific traffic

information and service for the handicapped people will be included.

- MAPPED (Mobilisation and Accessibility Planning for People with Disabilities) will provide users with the ability to plan excursions from any point to any other point, at any time, using public transport, their own vehicle, on foot, or using a wheelchair, taking into consideration all their accessibility needs.
- The work in the MICOLE (Multimodal collaboration environment for inclusion of visually impaired children) project aims to develop a system that supports collaboration, data exploration, communication and creativity of visually impaired and sighted children.
- The goal of SYNFACE (Synthesised talking face derived from speech for hearing disabled users of voice channels) project is to develop multilingual technology for a speech-derived synthetic face that gives essential visual speech information to hearing impaired users of telephone and other voice channels. This group is significantly for handicapped in access to spoken information.
- Functional Electrical Stimulation (FES) is used to restore functional abilities in disabled people. The goal of TETRA (Development of Tendon force Transducer for neuroprostheses) project is to develop a new type of tendon transducer that can measure force and tendon movement concomitantly. The accurate joint position and movement information in multiple joints is necessary for bringing functional electrical stimulation into everyday life in handicapped people e.g. for controlling automatic paraplegic gait, the drop-foot of stroke patients or hand and finger movement and grip forces in quadriplegic subjects.
- THINK (Towards Handicap Integration Negotiating Knowledge) is a project that takes into account the difficulties faced by the physically handicapped in accomplishing the full integration.
- The aim at creating a complex wireless "device family" like in WEB CONSYS (WEB-based, wireless CONference info-SYStem) project, which in the first run will satisfy the above-mentioned services but remains universally open for other forms of application (e.g. education). It is also of utmost importance that the proposed system will offer a full solution for handicapped people for their participation in conferences and social events.

Some of the Information Society Technologies (IST) projects within the priority context of 6th Framework Programme for Research have been realized and those are related to disability issues, listed below (Information Society Technologies (IST) (2005):

- The applications to be implemented in CATCH 2004 (Converse in Athens, Cologne and Helsinki) will be chosen for three different communication systems, namely voice telephone access, smart wireless communication devices and information kiosks. Multi-scalable services capable of accommodating expert and novice users, or users with educational or language barriers (the visually impaired and the handicapped with the same level of competency and ease) are specified.
- “Seeing is believing” thanks to cognitive vision (COGVIS) project. Versatile robots could be here autonomously carrying out tasks such as assisting elderly people and the handicapped with meal preparation and basic cleaning. Several Nordic handicap associations are showing interest in the latter aspect of the project. The project aims to provide the methods and techniques needed for construction of vision systems. Such systems will perform task-oriented categorisation and recognition of objects and events, in the context of an embodied agent. A robot, for instance, could interpret the actions of humans and interact with its environment - perhaps fetching and delivering objects in a home.
- Using tactile feedback for the visually impaired and handicapped (Mouse RSI sufferers). Market for helping handicapped and visually impaired PC users.

2.3.2.2. Independent Living and De-institutionalisation

It is important for disabled people to live independently in the community or at home instead of institutions. Symbiosis that could be developed in institutions is counted as one of the source of discrimination. In order to be able to cope with the increasing demand, de-institutionalisation works best when supported by adequate healthcare provision and long-term care and support services in the community.

2.4. The EU Disability Action Plan (DAP)

Three operational objectives are central to the DAP:

1. Full implementation of the Employment Equality Directive
2. Successful mainstreaming of disability issues in relevant Community policies
3. Improving accessibility for all.

The DAP covers the period 2004-2010 in successive phases, each phase contains a number of inter-linked priorities. Phase 1 runs from 2004 to 2005, phase 2 from 2006 to 2007.

2.4.1. Priority Areas for the First Phase

The applications in the first phase (2004-2005) have proven some success in the mainstreaming of disability aspects, notably employment, ICT and education (eLearning). Combining the mainstreaming concept with disability-specific actions has achieved greater impact and a more successful labour market integration of disabled people.

Political impetus for the DAP shall be provided by the Group of Commissioners on Fundamental Rights, Anti-discrimination and Equal Opportunities, with support from the Commission Inter-service Group on Disability. The thematic dialogue with the EU High Level Group on Disability (HLGD), the European Employment Committee, and the Social Protection Committee will strengthen the cooperation with the Member States. The Commission will support and closely monitor implementation of the Employment Equality Directive (Directive 2000/78/EC of 27.11.2000, OJ L 303/16-22 of 2.12.2000) within its framework strategy on non-discrimination and equal opportunities for all (COM (2005) 224 final 01.06.2005).

2.4.2. Priority Areas for the Second Phase

Second phase of the DAP (2006-2007) will focus on active inclusion of people with disabilities, focusing on the citizens' concept of disability as reflected in the EU Charter of Fundamental Rights Charter of Fundamental Rights of the European Union (2000/C 364/01, Official Journal of the European Communities, C 364/1, 18.12.2000) Article 26, p. 14: "The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community" and on the values inherent in the forthcoming UN Convention on the protection and promotion of the Rights and Dignity of Persons with Disabilities (UN General Assembly resolution, 56/168 of 19.12.2001).

It is implicit in the citizens' concept that disabled people have the same individual choices and control in their everyday life as the non-disabled people. This emphasises the need for an environment that enables disabled people to be more independent. Persons with disabilities and their individual needs are central to the care and support services.

2.4.3. Actions with High Priorities

Under the following five priorities, actions will promote the independent living of people with disabilities (COM (2005) 224 final 01.06.2005):

Rate of Activity and Employment

Encouraging activity is one of the actions with high priority. A key theme of the revised Lisbon strategy on employment is to 'attract and retain more people in employment, increase labour supply and modernise social protection systems'. Increasing the employment and activity rates of disabled people will, therefore, remain a priority.

The Commission's discussion paper on disability mainstreaming in the EES (European Employment Strategy) provides a valuable guide for the integration of the disabled people into the open labour market. The new integrated guidelines define criteria for national target-setting, but the process must be focused and supported by statistical data. This paper identifies, among other problems, the low number of people who return

to work after experiencing Long Standing Health Problem or Disability (LSHPD), which inhibits independent living. Strategies for the adaptation and reintegration into working life of people who become disabled during their working life will be encouraged. Rehabilitation services, individualised personal assistance will be promoted.

The European Social Fund (ESF) has supported and will continue to support the active inclusion of disabled people into society and the labour market. In the next programming round (2007 to 2013), one of the priority areas (reinforcing the social inclusion of disadvantaged people with a view to their sustainable integration in employment and combating all forms of discrimination in the labour market) for action proposed by the Commission is pathways to integration and re-entry into employment for disadvantaged people, e.g. disabled people and people caring for dependent persons (European Social Fund and repealing Regulation (EC) No 1784/1999: Article 3c(i), p. 14).

Access to Quality Support and Care Services

Promoting quality, affordable and accessible social services and support to disabled people through consolidated social protection and inclusion provisions will be at the core of EU mainstreaming actions. Many societal changes, which have impact on household structures and place new demands on family units, will arise many questions about the best policies and actions to provide long-term care and assistance services, including the older disabled people.

In the White Paper on Services of General Interest (Commission of the European Communities (2004), the Commission announced its intention to adopt a Communication in 2005 on health and social services of general interest; to identify the specific characteristics of health and social services of general interest and clarify the framework in which they operate. Quality aspects of disability-related social services will also be explored, including the need to promote coordinated delivery of services.

The Commission will also present a proposal to streamline the different Open Methods of Coordination (OMC) in social protection and social inclusion, and will develop policy cooperation on health and long-term care alongside existing work on

social inclusion and pensions. It will enable relevant aspects of social protection policies such as access to integrated care and support systems to be covered (Commission of the European Communities, 2006, SEC (2006) 345).

The situation of de-institutionalised disabled people in residential institutions will be further supported. The promotion of a service level that strikes an appropriate balance between security, freedom and independence will be encouraged.

Accessibility

Another action with a high priority is the fostering of accessibility of goods and services. Work on services, transport and increased accessibility of ICT, including access to the new generation of assistive systems, will be added to the current actions on accessibility of public buildings. Accessible transport systems are an important element in the independent living concept: accessible public transport and accessible public environment complement and mutually reinforce developments in each field. They will be promoted in and between urban areas.

In transport services, the rights of disabled persons and of persons with reduced mobility cannot be limited to accessibility of means of transport as they also encompass non-discrimination. The European Commission is taking concrete steps to foster these rights by adopting policy documents and legislative proposals. In its White Paper “European transport policy for 2010: Time to decide” (COM (2001) 370 final) the Commission envisages the establishment of passengers' rights in all modes of transport. The Commission Communication on strengthening passenger rights within the European Union (Commission of the European Communities, COM (2005) 46 final) identifies a range of fields for action, among which first priority is given to non-discrimination and assistance to persons with reduced mobility in all modes of transport. The 2004 Commission proposal for a Regulation on international rail passengers' rights and obligations (Commission of the European Communities, COM (2004) 143 final 2004) provides for non-discrimination of persons with reduced mobility travelling by rail as well as assistance before and during the journey. The Commission proposal for a “Regulation on the rights of persons with reduced mobility travelling by air” (Commission of the European Communities, COM (2005) 47 final, 07/2005 (COD). It

guarantees mandatory assistance to such passengers at airports and in aircraft, together with quality standards for assistance by airports. The Commission is currently analysing how to extend such passenger rights to maritime traffic and international coach services. To this end, in July 2005 the Commission launched a public consultation on the rights of passengers in international bus and coach transport and intends to launch a consultation on the rights of maritime passengers. The effectiveness of the measures adopted in favour of persons with reduced mobility would be best assured by the competent national enforcement bodies.

The potential of new technologies to create an inclusive Europe is significant. Accessible mainstream ICT technology, interoperable with assistive technologies supported by European standards, consumer demand and other aspects of development open up new markets. By encouraging through public procurement the development of products designed for the widest possible consumer segment, new markets can be opened up and penetrated. This already happens in the USA and is starting in Japan. Promoting an inclusive knowledge society is therefore a key objective of the i2010 initiative. It announces “stimulation measures to make ICT systems easier to use for a wider range of people” and the “Issue of policy guidance on e-accessibility”. It addresses technologies for independent living and refers to the eAccessibility Communication which fosters three approaches not yet widely used in Europe: public procurement, certification, and extensive implementation of the current legislation.

Analytical Capacity and Capability

Increasing the EU’s analytical capacity and capability is a planned action with a high priority. Reliable and comparable data are essential in order to evaluate the situation of disabled people and how developments interact with other policy areas. The related data has been obtained from previous Eurostat surveys and the Labour Force Survey ad-hoc module on ‘Employment of disabled persons’ as well as data from Member States’ administrative registers.

Through the European Statistical System (ESS) and within the Community Statistical Programme 2002-2007, consistent statistics on the integration of the disabled persons into society will be developed. Eurostat is working on a specific "module on the

social integration of disabled persons" in the framework of the European Health Interview Survey.

The Sixth Framework Programme for Research, technological development and demonstration activities (2002-2006, FP6), and the forthcoming Seventh Research Framework Programme (2007-2013) will continue to fund research in the area of disability. During FP6, disability policy research topics have been defined along the priorities set at policy level.

In line with the new EU framework strategy on non-discrimination and equal opportunities for all, multiple discrimination concerning disabled people will be addressed.

Freedom of Movement

Providing disabled people with freedom of movement is one of the concerns in the EU's actions in the future with high priority. Interest of the Commission in definitions of disability arises from the lack of mutual recognition of national decisions on disability and the impact of this on disabled people moving within the Union. The Commission made it clear that it was not seeking recommendations that Member States should change their definitions in particular ways to enhance the mobility of disabled people. Instead, it sought ways in which different definitions could be understood and compared, for example by establishing general concepts and descriptions. This is due to the respect for diversity. Issues in this respect are related to followings (European Commission, 2002, CE-V/5-02-004-EN-C):

- (1) Rights of residence
- (2) Exportability of benefits
- (3) Mutual recognition of decisions on entitlement to benefits.

2.5. The High Level Group on Disability

The Unit for Integration of People with Disabilities is a key player in the Commission's work to fulfil the aims of the European Union Disability Strategy - full accessibility for all. The Disability Interservice Group consists of 'Disability Correspondents' from people from relevant Directorates-General. They meet regularly to ensure that Commission policies take on board the needs of people with Disabilities. The Group aims to raise awareness of disability matters throughout the Commission. The High Level Group of Member States' Representatives on Disability consists of senior officials from each Member State, with observers from Iceland, Norway and the Council of Europe. The Group meets on regular bases to exchange information with each other and with the Commission on various disability matters. The European Parliament Disability Intergroup consists of cross-party Members of the European Parliament who focus on disability issues and ensure the related agenda.

2.5.1. Mandate for the High Level Group

As proposed by the Commission, in a Communication on Equality of Opportunity for People with Disabilities, a High Level Group of Member States' Representatives on Disability was constituted. The group consists of representatives of the Member State from the ministry level. The High Level Group is to:

- Monitor latest policies and priorities of Governments concerning people with disabilities
- Pool information and experience
- Advise the Commission on methods for reporting in future on the EU-wide situation with regard to disability.

For instance the High Level Group seeks to identify and compare how the Member States work to eliminate barriers in society and achieve full participation for all. The High Level Group has edited a Compendium on the organisation in each Member State of disability policy-making.

The High Level Group places particular emphasis on the areas set out in Section II of a Resolution adopted by the Council and Representatives of Governments on 20 December 1996 on Equality Opportunity for People with Disabilities:

- Empowering people with disabilities for participation in society, including the severely disabled, while paying due attention to the needs and interests of their families and carers
- Mainstreaming the disability perspective into all relevant sectors of policy formulation and implementation
- Enabling people with disabilities to participate fully into society by removing barriers
- Nurturing public opinion to be receptive for the people with disabilities and towards strategies based on equal opportunities - awareness raising.

The High Level Group also shares its experience with regard to the involvement of representatives of people with disabilities in the implementation and the follow-up of relevant policies and actions in their favour.

Furthermore, the High Level Group advises the Commission on the implementation of section II of the Resolution.

In these ways, whilst recognising that responsibility in this field lies with the Member States, the Commission and Member States strengthen co-operation in the field of disability and encourage the exchange and the development of good practice in the EU as indicated in the framework of the Resolution.

The subsidiarity principle is applied to make better achievements at national level. The Commission aims to:

- Strengthen co-operation in the field of disability between Member States
- Encourage exchange and development of good practice in the EU
- Promote and use comparative information and statistics

2.5.2. The Work Programme

The Council Resolution and the above mentioned mandate will provide the basis of the work of the High Level Group. The orientations adopted by the Council and the Government representatives reflect the current policy trends which are mainly based on the idea that the environment should be altered to enable people with disability to live independently in the society. This basic principle becomes apparent in terms such as "empowerment", "enablement", "mainstreaming" or "awareness". This approach is in line with a civil rights perspective which focuses on equal opportunities for people with disabilities.

However, it is important to acknowledge that despite significant differences in the details of Member States programme policies, all disability systems are faced with a set of key policy issues in implementing these guidelines where none of the systems has satisfactorily resolved. Yet, in every case, each system is trying different policy and programme approaches to resolve these issues. Therefore, disability policy is in a dynamic stage of development at EU level.

The High Level Group seeks therefore to identify and to compare the various approaches to the practical implementation of the Resolution orientations. This will provide a synthesis of Member States disability policies which will demonstrate both the complexity and variability of national disability programmes and confirm the major underlying issues which have emerged as essentials on cross national basis.

2.6. Disability Anti-Discrimination in the EU and USA

There is a huge legislation stock in the European countries on disability discrimination. In the following, legislations on disability discrimination in the EU and USA together with important legislations on disability discrimination in employment in the EU have been studied.

2.6.1. The Disability Anti-discrimination Legislation in Selected EU Countries

The disability anti-discrimination legislation in selected countries that represent best practice models, namely Denmark, Finland, France Ireland, the Netherlands, Sweden and the UK are briefed in following (Pillinger, 2003).

Denmark

In 1993 the Danish parliament adopted “B 43, Parliamentary resolution concerning equalisation of opportunities for disabled people and non-disabled people” as not a legally binding act but a decision in principle. Denmark has also incorporated the UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities. Denmark’s legislation on disability antidiscrimination points out that disabled persons have equal rights and must be treated in the same way as the non-disabled.

Finland

The Act on Services and Assistance for Disabled People (1987) supports independent living and equal opportunities. It also arranges provisions irrespective of financial or social status. It sets forth provisions for services on individual right to independent living for severely disabled people, such as transportation, housing, interpretation services and to personal assistance services. The Act on the Status and Rights of Patients (1992) holds a clear anti-discrimination in health care. The Finnish Constitution covers social and economic rights together with traditional political and civil rights on the basis that “everyone who is incapable of securing the necessities of life with human dignity has the right to the necessary income and care”. Finland was the first country to adopt the UN Standard Rules in 1993, resulting in a disability policy programme in 1995.

France

People with disabilities are treated as part of the society. People with disabilities tend not to be involved in the planning and monitoring of services. In France recent reforms are marked as a shift from models of care assistance to models of the development of independent living and integration into society. The French Penal Code makes it unlawful to discriminate against a person with a disability on the grounds of health or impairment when providing goods, services or employment.

Ireland

Services for disabled people have been at a low level, with low levels of resources and unequal geographic coverage of resources and services. In the recent years there has been a major push to improve both the quality and accessibility of services for disabled people. A Strategy for Equality, the report of the Commission on the Status of People with Disabilities (1996), recommended the establishment of the National Disability Authority which is established by The National Disability Authority Act (1999). The Authority develops standards and monitors their implementation. The Equal Status Act (2000) bans discrimination in the area of goods and services on nine grounds (gender, marital status, family status, sexual orientation, religious belief, age, disability, race, membership of the Traveller community).

The Netherlands

The Netherlands has highly decentralised services and a high level of provision and its services are universal. The rights of disabled people are protected by a combination of special and general legislation. The law allows for legal remedy through courts and there are a number of non-judicial mechanisms that exist to promote non-discrimination. The general legislation applies to all categories of disabled persons with respect to education, employment, the right to marriage, the right to parenthood/family, political rights and access to court-of-law, right to privacy and property rights. There are

also a number of guarantees to services in law including the right to medical care and other health care, training, rehabilitation and counselling, financial security, participation in decisions affecting them. The Netherlands has adopted the UN Standard Rules and implemented them through the Act on Facilities for the Disabled (WVG), was adopted and came into force in 1994.

Sweden

Sweden implements the UN Standard Rules through The Swedish Body of Organisations of Disabled People. The new national disability policy From Patient to Citizen: National Action Plan on Disability (2000) is especially for accessibility but also for prevention and fight against discrimination.

The Swedish Disability Act provides for support and services to people with disabilities and the Assistance Compensation Act covers people with physical or mental disabilities. The establishment of Disability Ombudsman has also worked within a rights based approach and monitor disability legislation. The Swedish Social Services Act (1982) provides the social integration and quality of life for people with disabilities, on equal terms with the rest of the population. The Support and Service for Persons with Certain Functional Impairments Act on 1 January 1994 provides equality and basic rights for people with disabilities.

The UK

The Disability Discrimination Act (1995) has a statutory duty to ensure that there is accessibility in services provided to the public. In Northern Ireland, the statutory duty exists as a result of Section 75 of the Northern Ireland Act. This places a statutory requirement on public authorities to promote equality of opportunity, including disability. The Northern Ireland Statutory Equality Duty is a model of legally enforceable duties to promote equality in health by requiring public authorities to be proactive in

mainstreaming equality, auditing their functions regarding equality and implementing new policies and practices to promote equality.

2.6.2. The Important Legislations on the Disability Anti-discrimination in Employment of People with Disabilities in the EU countries

In this section, the EU countries have been studied under two parts due to the details. The first part holds for the first 15 member countries of the EU (EU15) and the second part is for the countries joined recently and the candidates in process of accession. A separate section on Turkey follows since certain facts are related to Turkey as a candidate country.

The main legal provisions in EU15 countries are studied in the followings as per constitutional provisions and statutory provisions (Pillinger, 2003):

Austria

Constitutional provisions: Article 7(1) states: "No person may be discriminated against on the grounds of his or her disability. The Republic (Federation, provincial authorities and local authorities) undertakes to guarantee the equal treatment of disabled and non-disabled persons in all areas of daily life". This has to be applied by the legislative authorities and this was carried out in 1999 under Federal Law which eliminated provisions discriminating against disabled people.

Statutory provisions: Under administrative penal law, a fine can be imposed on anyone unjustifiably discriminating against persons or restricting their access to public places or services on the grounds of, among others, their disability. One provision enables local authorities to withdraw operating licences from business owners who discriminate against any disabled person. Under the Disabled Persons' Employment Act registered disabled people have special protection against dismissal and protection of remuneration in the event of the onset of a disability. A representative for the disabled is required in enterprises employing at least five disabled workers. The long-term objective is to

include disabled people in mainstream employment support services. There is a four % quota obligation for employers with a staff of over 25. Financial support to employers is available under the Act.

Belgium

Constitutional provisions: Covered under general provision of equality under the law.

Statutory provisions: A collective agreement on the recruitment and selection of workers covers discrimination based on disability. Employment services for the employment of disabled people are provided for under the Social Rehabilitation Act of 1963 which set up the National Fund for the Social Rehabilitation of Disabled People, including funding for technical aids and access. There are a variety of subsidies and grants for private and/or public sector employers.

Denmark

Constitutional provisions: Article 75 (2) of the Constitution of the Kingdom of Denmark Act 5th June, 1953 states that "Any person unable to support himself or his dependants shall, where no other person is responsible for his or their maintenance, be entitled to receive public assistance provided that he complies with the obligations imposed by Statute in this respect".

Statutory provisions: Danish disability policy seeks to give disabled people equal opportunities in the labour market through the provision of support, aids and personal assistance and wage subsidies to employers. The main objective of disability policy in the labour market is to provide for equality and removing the barriers to equal participation. The public employment service can provide financial support for the recruitment of a personal assistant for employees and self-employed persons with a disability providing special assistance in connection with the performance of their job. Municipalities and the public employment service may also grant financial support to disabled persons in

employment or in training with special tools and technical aids which may be necessary to perform the work or participate in training. In addition, public authorities have a duty to give disabled persons priority in all jobs they are able to perform.

Disabled people who have completed their education can be recruited as trainees with public or private employers. Support and personal assistance is provided. Disabled persons who are not able to find employment in the ordinary labour market, but whose working capacity is not sufficiently reduced to make them qualify for anticipatory social pension, may be employed in so-called "flex" jobs. Most collective agreements in both the public and the private sector now include special provisions, so-called social chapters, which make it possible to make special provisions for disabled employees.

Germany

Constitutional provisions: Article 3 (3) of the Basic law of the Federal Republic of Germany states that " No person shall be favoured or disfavoured on the basis of sex, parentage, race, language, homeland and origin, faith or religion or political opinion. No person shall be disfavoured because of disability".

Statutory provisions: At the federal level, the Ministry of Labour and Social Affairs is responsible for vocational integration and laws relating to disabled people. There are special centres for vocational rehabilitation, financed and run by a range of organisations including the federal Government. Specialists at local employment offices arrange placements with employers and if employers choose to register a vacancy with the employment office it must be checked for suitability for a disabled person. In some areas, special programmes exist for the placement of disabled people in permanent public sector jobs. New placement models include 'specialist integration services' to ease transition from sheltered workshops or unemployment.

Legal obligations and rights are also set out in the Severely Disabled Persons Act. Employers are required to examine every vacant post for suitability for a severely disabled worker and they must employ severely disabled people in a way that they can use and develop their abilities to the fullest extent possible. Seriously disabled people

also enjoy a special level of protection against dismissal under the act. Under the Works Constitution Act, council has the duty to promote the rehabilitation of disabled people in the establishment. Employer must supply comprehensive information to the council in order to enable it to fulfil its duties.

Greece

Constitutional provisions: A constitutional principle of equality under Article 4.1 states that “all Greeks are equal before the law”.

Statutory provisions: Policy in the field of vocational training and employment is linked with the principle of equal opportunities and 'a promise that disabled people can and must contribute to the country's social and economic development'. Compulsory employment was introduced in 1979 in the public sector and extended to the private sector in 1986. The quota obligation applies to any organisation operating in Greece which employs over 50 staff; such organisations must fill a total of seven per cent of jobs with disabled people and other disadvantaged groups. In 1995, an administrative penalty was introduced for cases where employers fail to respect the law. Extra obligations apply to the filling of public-sector vacancies. In banks, the public sector and local authorities, a proportion of vacancies in specified ancillary occupations must be reserved for people protected by law. One in four lawyers in public occupations must be a person protected by the law. In addition, in banks and the public sector, switchboard vacancies must be filled by a certain %age of blind people.

France

Constitutional provisions: No specific provisions

Statutory provisions: French labour law includes a number of provisions aiming to prevent discrimination under the ground of disability. Company rules and regulations may not be prejudicial to employees in their employment or work on grounds of their disability, and no person may be excluded from recruitment procedures, disciplined or

dismissed on grounds of their disability, although an exception is made where a doctor certifies that the disabled person is not suitable for the work in question. Legislation passed in 1991 included several measures to improve access to public establishments, workplaces and places of residence and education. The law ensures that account is taken of all types of disability. Controls were imposed on the construction of public buildings. Certain provisions in the Penal Code relate specifically to discrimination.

Ireland

Constitutional provisions: No specific provisions

Statutory provisions: Legislation passed in 1992 sought to remove obstacles, improve access and make it possible for disabled people to benefit from mainstream services and facilities. Legislation passed in 1999 sets out a list of norms governing the rights of disabled people at work.

A compulsory employment scheme exists with quotas for separate categories of disadvantaged people. Employers who do not implement the quota for economic reasons must contribute a sum into a regional fund promoting employment for disabled. Private and public employers, who ignore their obligations under the 1999 law and fail to provide documentation demonstrating that they have fulfilled these, are subject to heavy fines.

Italy

Constitutional provisions: Article 3: "It is the responsibility of the Republic to remove all obstacles of an economic and social nature which, by limiting the freedom and equality of citizens, prevent the full development of the individual and the participation of all workers in the political, economic and social organisation of the country." Article 4 recognises the right of all citizens to work and perform, in accordance with their abilities and preferences, work which contributes to the material or spiritual development of society. Article 38 states that "Any citizen unable to work and lacking the means necessary to live has a right to maintenance and social assistance."

Statutory provisions: Legislation passed in 1992 sought to remove obstacles, improve access and make it possible for disabled people to benefit from mainstream services and facilities. Legislation passed in 1999 sets out a list of norms governing the rights of disabled people at work.

A compulsory employment scheme exists with quotas for separate categories of disadvantaged people. Employers who do not implement the quota for economic reasons must contribute a sum into a regional fund promoting employment for disabled. Private and public employers, who ignore their obligations under the 1999 law and fail to provide documentation demonstrating that they have fulfilled these, are subject to heavy fines.

Luxembourg

Constitutional provisions: No specific provisions.

Statutory provisions: The 1991 law on disabled workers regulates disabled people's rights in employment. To qualify under the law, a person must be recognised as disabled by the authorities and must be registered. If a disabled person declines a post or training measures proposed by the authorities, they lose the right to employment under the quota scheme. Employers with a staff of at least 25 must employ at least one full-time disabled worker. Those with a staff of at least 50 must meet a 2 % quota and those with at least 300 staff must meet a 4 % quota. The amended Penal Law also covers discrimination on grounds of disability.

The Netherlands

Constitutional provisions: Article 1 of the Constitution states that all persons in the Netherlands are to be treated equally in equal circumstances. Disability is not explicitly mentioned, but discrimination on the grounds of religion, belief, political opinion, race or sex or any other grounds whatsoever is prohibited.

Statutory provisions: In the 1980s, reforms were carried out to place new obligations on, and incentives to, the economic players to assist the return to work of disability benefit recipients and to prevent workers who become disabled from entering the benefit system. The Employment Service provides vocational guidance and training, brokerage and placement, and other assistance to unemployed job seekers. The municipalities have administrative responsibility for directly subsidised job creation schemes, including sheltered workshops and supported employment schemes.

The 1998 Act on the reintegration of disabled persons into work aims to increase the participation of disabled persons in the labour market and prevents unemployment by more efficient administrative procedures in applications for subsidies and by minimising financial risks for employers, as well as measures for disabled persons, such as additional income (in the event of lower pay), training facilities and individual job coaching.

Portugal

Constitutional provisions: According to Article 71 (2) of the Constitution of the Portuguese Republic:

"the State shall carry out a national policy for the prevention and for the treatment, rehabilitation and integration of disabled persons, shall develop a form of education to make society aware of its duties of respect for them and solidarity with them and to ensure that they enjoy their rights fully, without prejudice to the rights and duties of their parents or guardians".

Statutory provisions: The law of 1989 aims to promote constitutional rights in the fields of disability prevention, treatment, rehabilitation and equal opportunities. It lays down six fundamental principles in all aspects of life affecting disabled people which guide rehabilitation policy, including equal opportunities in areas such as employment. The law also lays down the policy aims of state institutions in health, education, social security, vocational training, employment, transport, housing and public buildings, fiscal arrangements and culture, sport and recreation. The intention is to create a network of services linking health, education, social security and employment.

Firms employing a staff of at least 20 are obliged to give priority in recruitment to persons permanently incapacitated as a result of accidents occurring in their service, providing them with work compatible with their disability. Employers receive financial assistance including compensation for a period of reduced performance while adapting to the job, reduction of employers' social security charges, lump-sum integration awards and grants for the adaptation of work stations and elimination of obstructions in buildings. Employers may apply for reimbursement of payments to personnel contracted to provide follow-up and support to disabled persons through the process of integration for up to six months.

Finland

Constitutional provisions: According to section 5, paragraph 2 of the Finnish Constitution, no person shall, without reasonable grounds, be afforded a different status on account of, among other grounds, disability.

Statutory provisions: Finland has no quota or preferential employment policies and no anti-discrimination legislation for disabled persons. People who have lost partial working capacity while in employment are very well protected and employers are required to make a 'tailor-made' job for such persons. However, after one year of partial incapacity related to sickness, the employer has a legal right to dismiss the person if suitable work cannot be found. The Occupational Safety Act requires that the use of technical aids and the special needs of disabled people must be taken into account.

Employment subsidies include support to the employer costs and support to the unemployed person for self-employment and on-the-job training. A subsidy for a disabled person can be paid to an employer for a maximum of two years. The amount of subsidy varies for each individual placed through the employment services.

The Penal Code prohibits discrimination on, among others areas, health grounds. An employer discriminating against someone on health grounds can be subject to a fine or imprisonment for at most six months.

Spain

Constitutional provisions: The Constitution refers explicitly to the rights of people with physical, mental or sensory disabilities to work, to complete self-fulfilment and to full social integration. Also the Workers Statute states that no one may be discriminated against on grounds of physical, mental or sensory disabilities, provided they are able to perform the work or job concerned.

Statutory provisions: Legislation passed in 1982 sets out the state's responsibilities for prevention of disability, education, rehabilitation, social security and guaranteed minimum economic and social rights, as well as for vocational training and integration at work.

A Royal Decree regulates the reinstatement of disabled workers once they have completed the relevant rehabilitation process. If a worker suffers a permanent partial disability, he or she is entitled to re-employment in the same firm, either in the same job with a similar wage, if outputs remain normal, or in a job adapted to residual capacity with a wage drop of no more than 25 %. Payment cannot be less than the minimum statutory basic wage, if the worker is employed full time. If the worker regains full capacity, the employer is required to reinstate him/her in the original job. A trial period of adjustment can be agreed for no longer than six months.

The quota system, introduced in 1983, requires public and private employers with more than 50 workers to reserve two per cent of their jobs for registered disabled people, whose capacity for work is reduced by one third or more. For Government employees, the quota is set at three per cent, but research has concluded that the quota for civil servants is rarely met and that private companies have little or no compunction about not meeting the lower quota. An additional proposal would give companies the alternative of donating to a Fund to encourage the inclusion of disabled workers in open employment.

Sweden

Constitutional provisions: No specific provisions

Statutory provisions: Sweden has a long social democratic tradition of universal services for its citizens that continue to be at one of the highest levels across Europe. The Swedish social democratic model is based on full employment, women's participation, active labour market policies and universal benefits based on notions of citizenship and entitlement, and social corporatism typified by social partnership approaches to policy making and bargaining. A high priority is now attached to the reform of welfare to reduce its abuses and adverse effects and to improve the effectiveness and efficiency of services. This has led to decentralisation of services to the local level, the greater involvement of user and community participation, and a partnership approach to service planning. Under the Swedish Social Services Act of 1982, municipal social services were given greater responsibility for meeting the needs of people with disabilities and mental health difficulties, including acceptable housing and meaningful employment. A parliamentary commission in 1992 - the Committee on Psychiatric Care - concluded that social services were not being provided in a satisfactory manner. This led to further legislation, introduced in January 1995, which sought to provide for the social integration and quality of life for people with mental difficulties, on equal terms with the rest of the population.

The UK

Constitutional provisions: The UK has an "unwritten" Constitution. The Human Rights Act 1998 gives effect to the rights under the European Convention of Human Rights, including Article 14 prohibition of discrimination.

Statutory provisions: The Disability Discrimination Act, 1995 makes it unlawful to discriminate against disabled people in connection with employment, the provision of goods and services and buying or renting land or property. The Act protects disabled people from discrimination by employers (with 15 or more employees) by making it unlawful for such an employer to treat a disabled person less favourably than he would treat other people. It requires employers to make reasonable adjustments to arrangements and physical features of premises which place a disabled person at a substantial disadvantage in comparison with non-disabled persons so as to prevent the arrangement or physical feature from having that effect.

New duties came into force requiring service providers to make reasonable adjustments, such as providing extra help, where the services are impossible or unreasonably difficult for disabled people to use on 1.10.1999. From 2004 on, service providers have to make reasonable adjustments to the physical features of their premises to overcome physical barriers to access. A disabled person who has experienced less favourable treatment or who believes that a reasonable adjustment should have been made has the right to take civil proceedings against the service provider concerned. In 2000, a Disability Rights Commission was established to help disabled people enforce their rights and to provide advice for employers and service providers on their duties under the Disability Discrimination Act.

Supportive legislations in employment of people with disabilities, namely, (1) Quota for employment of PWD, (2) Specific employment supports for PWD, and (3) Statutory disability provisions according to EU15 countries are studied at below table (Table 2.1).

Table 2.1. Legislative support for disability anti-discrimination on employment in EU15

Country	Quota for employment of PWD	Specific employment supports for PWD	Statutory disability provisions
Austria	Yes	Yes	No
Belgium	Yes	Yes	No
Denmark	No	Yes	No
Germany	No	Yes	No
Greece	Yes	Yes	No
France	Yes	Yes	No
Ireland	Yes	Yes	Yes
Italy	Yes	Yes	n/a
Luxembourg	Yes	Yes	No
The Netherlands	No	n/a	No
Portugal	Yes	Yes	No
Finland	No	Yes	No
Spain	n/a	n/a	n/a
Sweden	Yes	Yes	Yes
UK	No	Yes	Yes

Source: Pillinger, J. (2003). *Managing diversity in public health and social care in the interest of all citizens, Report II: Disability*, Dublin, European Social Network, p. 5.

It is shown that the existence of a statutory body gets weaker (3 of 15 countries) in EU15 countries where specific employment support arrangements take ground (13 of 15 countries: related data is not available for Netherlands and Spain). It appears that quotas for employment are presented in 9 countries out of 15: related data is not available for Spain) in EU15 countries.

New member states joined the EU recently. These are ten countries namely: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Accession negotiations are carried on with Bulgaria, Croatia, Romania and Turkey.

Report entitled ‘equality, diversity and enlargement’ of 3.10.2003 pointed out that none of the countries had fully implemented the requirements of the EU Directives, although there was evidence that most were in the process of preparing for implementation or have already taken partial steps to accomplish this goal, before they joined the union as of 1.05.2004 (European Commission, 2003, KE-54-03-203). The report found encouraging signs that many states were debating anti-discrimination laws that go beyond the minimum standards required. Overall, the study notes that, while there has been progress in certain countries, coverage of discrimination on other grounds is uneven. It seems that in seven months these joined countries completed their obligations in transposing to the requirements of the EU Directives.

Countries presented under the report (candidacy of Croatia was not announced at the time the report was written) are divided into three categories in terms of their degree of transposition of the EU anti-discrimination legislation (European Commission, 2003, KE-54-03-203):

- Those that have partially transposed the legislation: Six countries is in the first group, having already adopted legislations that seek to implement the EU Directives - Latvia, Lithuania, Malta, Romania, Slovakia and Slovenia. Although none of these legislations addresses all elements of the Directives, they constitute a first step in this direction. In Romania, an ordinance was adopted in 2000 on preventing and punishing all forms of discrimination, which was backed up by parliamentary legislation in 2002 forbidding discrimination in a wide range of areas and on all the grounds listed in Article 13 of Amsterdam, although age was not fully covered. However, a new Labour Code adopted in January 2002 forbids discrimination on the ground of age, as well as the other Article 13 grounds. In Slovakia and Latvia, new Labour Codes entered into force in 2002, both containing open-ended prohibitions on discrimination that explicitly mention all Article 13 grounds, except sexual orientation. Slovakia is now preparing additional legislation to complete implementation of the Directives. Slovenia adopted a new Employment Act in 2002 forbidding discrimination on all Article 13 grounds, though it does not comply with some detailed aspects of the Directives. In Lithuania, a new Labour Code entered into

force in 2003, forbidding discrimination on all Article 13 grounds except disability, which was covered by previous legislation. Malta has had specific legislation on disability discrimination since 2000 and this was complemented in 2002 by a law providing a non-exhaustive list of prohibited grounds of discrimination (which does not include age and sexual orientation).

- Those where transposition is in progress: Progress was most advanced in the three countries Bulgaria, Estonia and Poland.
- Those with no immediate plans for transposition: Based on the independent report on country Turkey by Levent Korkut and Aslihan Öztezel, Turkey was the only country which currently has no specific plans for full transposition of the Directives.

2.6.3. Anti-discrimination Legislation in the USA

Although legislation varies from country to country this is part of good practice in the development of equality and access to services. The UK Disability Discrimination Act and the Americans with Disabilities Act are considered as some of the best examples in the world, both of which will shortly be amended to provide for a more enhanced rights-based approach (Pillinger, 2003).

Considering the following Census Bureau statistics drawn from the 2002 Survey of Income and Program Participation, some of the most recent government figures available:

Americans with disabilities attain a lower level of education than those without disabilities on average. For example, almost 27 % of adults ages 25 to 64 with a severe disability did not graduate from high school. By comparison, 14.6 % of individuals with a non-severe disability and 10.4 % of individuals with no disability failed to graduate from high school. Out of people ages 25-64, 43.1 % of those without a disability graduated from college, compared with 32.5 % of individuals with a non-severe disability and just 21.9 % of those with a severe disability (U.S. Department of Justice, 2006).

In addition, American adults with disabilities, on average, are poorer and are far more likely to be unemployed than those adults without disabilities. For example, median earnings for people with no reported disability were \$25,000, compared to \$22,000 for people with a non-severe disability and \$12,800 for those with a severe disability. In addition, more than one-fourth (25.7 %) of individuals with no disability had household incomes of \$80,000 or more, in comparison with 18.1 % of people with a non-severe disability and 9.2 % of individuals with a severe disability.

Approximately 56 % of adults ages 21-64 who had a disability were employed at some point in the one-year period prior to participating in the survey. People with severe disability status reported the lowest employment rate (42 %), compared to the employment rates of people with non-severe disabilities (82 %) and those with no disability (88 %). Almost 27 % of adults ages 25-64 with a severe disability live in poverty. By contrast, 11.2 % of individuals with a non-severe disability and 7.7 % of individuals with no disability live in poverty. Out of adults 65 years of age and older, 15 % with a severe disability live in poverty, while 8.2 % of individuals with a non-severe disability and 5.9 % of individuals with no disability live in poverty.

Finally, many Americans with disabilities live outside the economic and social mainstream of American life. Adults with disabilities have a lower likelihood of living with family than adults without disabilities. People with disabilities were more likely than people without disabilities to live alone or with non-relatives: among people 25 to 64 years old, 18.9 % without disabilities lived alone or with non-relatives, compared with 23 % with a non-severe disability and 27.8 % with a severe disability. People 25 to 64 years old with a severe or non-severe disability were more likely to be the householder in a male- or female-headed household (12.7 %) than people without a disability (8.8 %). Of those ages 15 to 64, 36 % with a severe disability used a computer, and 29 % used the Internet at home. By contrast, individuals with a non-severe disability or with no disability had substantially better computer access with 60.7 % using a computer and 50.9 % using the Internet at home (U.S. Department of Justice, 2006).

In addition to these figures, the data from a 2004 Survey conducted by the National Organisation on Disability in conjunction with the Harris polling organisation

provides further insight into hurdles faced by persons with disabilities in enjoying community opportunities. According to the survey, persons with disabilities are twice as likely as those without to have inadequate transportation (31 % compared to 13 %), have a higher likelihood of going without medical care (18 % compared to 7 %), and are less likely to socialize, eat out, or attend religious services. In addition, a full one-third of individuals with disabilities using assistive technology say they would lose their independence without it, illustrating its fundamental importance in promoting independent living.

These problems were entrenched due to a long history of shameful hostility and fear of people with disabilities. Such hostility and fear produced outright discrimination and exclusion, and in some cases, forced sterilisation and unnecessary institutionalisation. Moreover, even some well-intentioned social policies had the effect of promoting dependency and isolation rather than independence and involvement in the community.

Some of the damaging consequences of disability discrimination are the isolation and segregation of persons with disabilities. In passing the ADA, Congress recognized that such forms of discrimination result in social, vocational, economic, and educational disadvantages to individuals with disabilities and that such practices run counter to the Nation's goals of assuring equality of opportunity and full participation in society. Especially where a disability is based on a mental disorder or mental illness, negative stereotypes and unfounded fears can be formidable obstacles to achieving the type of integration and participation envisioned by the ADA. One of the ways in which the Department furthers the goal of full participation is through enforcement of the Act's prohibitions against discriminatory zoning and commercial leasing practices (U.S. Department of Justice, 2006).

2.7. Disability Anti-Discrimination in Turkey

Disability anti discrimination issues in Turkey have been studied in this section under three folds, namely, mainstreaming issue in disability policy of Turkey, anti-discriminative legislation in Turkey and the bodies for promotion of equal treatment.

2.7.1. The Disability Anti-discrimination Policy of Turkey

Mainstreaming is the central concept in the formulation of the national disability policy. Quota System is mainly based on mainstreaming issues.

Mainstreaming process in Turkey on disability issues have been studied in the framework of legislations. Following legislation records indicates the mainstreaming in Turkey:

1. General principle of the Disability Law: “State shall not exercise discrimination against the disabled people. Combating discrimination is the basic principle of the policies towards the disabled people” Law 5378, Article 4a. Disability Law is adopted by Turkish Grand National Assembly on 1.07.2005.
2. According to the Decree Law 573 on Special Education, adopted in 1997, education of children with disabilities is provided in the same environment as other children. “The special education services will be planned and provided without separating the individuals who are in need of special education from their social and physical environments as much as possible. It will be a priority to educate those individuals who are in need of special education together with other individuals by taking those individuals’ educational performances into consideration and by making adaptations in the aim, content and teaching processes” (Article 4c and 4d).
3. Labour Law bans discrimination on the grounds of language, race, gender, belief, political opinion, philosophical belief, and religion etc. in work relations (Article 5). Discrimination on the grounds of disability is not explicitly defined (Republic of Turkey, Prime Ministry, Secretariat General for EU Affairs, 2006).

2.7.2. The Disability Anti-discrimination Clauses in Turkey

Disability anti-discriminating clauses in legislation in Turkey could be studied in two folds: one is for the conditions for accession to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion, and

the other is for accession to and supply of goods and services. All are related with the Constitution, Penal Code No. 5237 and Law on Disabled People No. 5378.

- a) Conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion

Constitution

Article 10. All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations

Article 50. No one shall be required to perform work unsuited to his age, sex, and capacity. Minors, women and persons with physical or mental disabilities, shall enjoy special protection with regard to working conditions.

Penal Code No. 5237

Article 122(1). A person who by practicing discrimination on grounds of language, race, colour, gender, disability, political ideas, philosophical beliefs, religion, sect and other reasons:

- i) who makes the employment of a person contingent on one of the circumstances listed above,
- ii) who prevents a person from carrying out an ordinary economic activity,

shall be sentenced to imprisonment for a term of six months to one year or imposed fine.

Law on Disabled People No. 5378

Article 14. In recruitment, no discriminative practices can be performed against the disabled people in any of the stages from the job selection to application, selection process, technical evaluation, suggested working periods and conditions.

Working disabled people cannot be subjected to any different treatment than the other people with respect to their disability such that it could cause a result which is unfavourable for them.

b) Access to and supply of goods and services which are available to the public including housing

Penal Code No. 5237

Article 122(1) - A Person who, by practicing discrimination on grounds of language, race, colour, gender, disability, political ideas, philosophical beliefs, religion, sect and other reasons:

a) prevents the sale or transfer of personal property or real estate or the performance or enjoyment of a service or who makes the employment of a person contingent on one of the circumstances listed above,

b) withholds foodstuffs or refuses to provide a service supplied to the public,

c) prevents a person from carrying out an ordinary economic activity,

s/he shall be sentenced to imprisonment for a term of six months to one year or judicial fine.

Legislations such as Constitution (Article 56), Law on Civil Servants No. 657 (Article 7), Labour Law No. 4857 (Articles 5, 18-D, And 20) and Basic Law on National Education No. 1739 (Article 4) mention about inhibition of discrimination, as well. Penal Code (Article 122), Law on Civil Servants (Article 125/C), Administrative Jurisdiction

Law (Articles 12-13) and Labour Law (Articles 5, 18, 19, 20, 21, 99) arrange sanctions for persons perform discrimination.

2.7.3. Institutions for Disability Anti-discrimination in Turkey

In Turkey, there are a number of bodies listed below; some of those are linked hierarchically to one another where some others are interconnected with duty links.

Bodies responsible for the promotion of equal treatment (Republic of Turkey, Prime Ministry, Secretariat General for EU Affairs, 2006):

- State Ministry in Charge of Human Rights
- Prime Ministry Undersecretary
- Prime Ministry Deputy Undersecretary
- Human Rights Presidency
- Human Rights Province Boards
- Human Rights District Boards
- Supreme Board of Human Rights
- The Consultancy Board of Human Rights
- Committees for Investigation of Human Rights Violence Claims
- National Committee on The Decade for Human Rights Education

Human Rights Presidency

Main duties:

- To be permanently in touch with both public and private authorities in charge of the issues related to human rights and to provide coordination between these organisations.

- To monitor, evaluate and coordinate application of the pre-service education, training and in-service human rights education programmes in public institutions.
- To examine and investigate applications for human rights violation claims, evaluate research results and coordinate studies regarding the measures to be taken.

Non-governmental Organisations (NGOs)

Human Rights Province Boards and Human Rights District Boards

Human Rights Boards are composed of representatives from relevant institutions and bodies, occupational organisations, social partners, universities and NGOs.

Main duties:

- To examine and investigate allegations of human rights violations,
- To examine and investigate obstacles to the protection of human rights, enjoyment of human rights and liberties, as well as social, political and administrative reasons leading to violations of rights and to recommend solutions to the governorship and sub-provincial governorship,
- To conduct the necessary work to prevent all kinds of discrimination,

The Consultancy Board of Human Rights

The board is established to improve communication between relevant public institutions and NGOs, as well as consultation on national and international issues concerning human rights.

Main duties:

- To improve communication between NGOs and the related government institutions.
- To act as a consultative body concerning human rights.

- To act as a consultative body to the State Minister in charge of human rights and to the Supreme Board of Human Rights on the issues of human rights including all terms of discrimination and xenophobia.

Executive Committee for People with Disabilities

Members are representatives of governmental organisations, NGOs, employee and employer unions, and universities. They are responsible for determining the priority for application and selecting the projects prepared by Prime Ministry Administration for Disabled People.

The Council for People with Disabilities

The duty of the Council is to discuss and analyze all ideas and developments about disability at national and international levels, make suggestions about the solutions and raise public awareness about disability issues.

The disability anti-discrimination issues were studied in this chapter and it can be concluded in the view that the Disability Law for EU is on its way. It is important for the EU for the basis of existence as a regional union the importance of which comes from political, social and economical structures. The study will proceed with studying the special education issue on the next chapter.

CHAPTER III

3. SPECIAL EDUCATION FOR INTEGRATION

The third chapter of the study is devoted to the special education of the disabled people. It starts with the brief history of special education and continues with the categorisation of disabilities and their role in the integration of the disabled people in society. Cross-national categorisation of disabilities in certain Organisation for Economic Cooperation and Development (OECD) countries are also studied for a comparative discussion concerning the inclusion or integration of students with handicaps into ordinary education systems. Inclusive education is the current approach in special education and practices of the EU countries, U.S.A. and Turkey have been studied. The chapter concludes with explication of five key documents on inclusive education in EU.

The main theme of the special education is founded on the diversities and differences of the individuals due to their physical or intellectual handicaps. Physical or mental restriction acts as an obstacle for the person and prevents him/her from achieving everyday activities.

The education provided for the children with special needs is called special education. Special education provides specialized instructions and services to individuals who would not receive maximum benefit from the ordinary educational practices or access to conventional instruction for individuals whose disabilities prevent them from taking it (Carpenter et al, 1991).

3.1. Brief History of Special Education

During the 19th century, many children and youths with severe handicaps were taught self-help skills. Special education did not grow extensively, however, until schooling became common. In the 20th century, the enactment and implementation of compulsory education laws, which put or kept more students in schools who otherwise would not have been there, led to an increasing need for special education services.

Although it was suggested that the children with special needs should stay at boarding schools, after the second half of twentieth century education of these children agreed to be realized in special classes. Afterwards, they carried on with their education closest to their neighbourhood. In order to summarize the above we can identify four stages in the development of social attitudes toward children and adults with handicaps (Gallagher, 1986).

Pre-Christian Era: During the pre-Christian era children with disabilities were neglected or mistreated.

Spread of Christianity and Islam: Children with disabilities were protected and pitied

Institutionalisation: In the eighteenth and nineteenth centuries institutions were established to provide separate education for exceptional children. Establishment of special classes in public schools was observed for the first time in Boston as the day classes created for children with hearing impairment.

Mainstreaming Special Education: Starting from the second half of the twentieth century, there has been a movement towards accepting people with handicaps and integrating them into society to the fullest extent possible under the philosophy of “least restrictive environment”.

3.2. Categorisation of Disabilities and Integration

There are several categorisation models of the disabilities. Some researchers classify the children with special needs as: The children with visual impairments, children with hearing impairments, children with communication disorders, children with behaviour problems, children with learning disabilities, children who are gifted and talented, children with mental retardation, children with multiple and severe handicaps and the children with physical handicaps (Gallagher, 1986).

The inclusive trends in the education of the pupils with special needs in the recent years object to the categorisation and labelling of the individuals with special needs in order to prevent any stigmatisation towards the people with special needs.

3.3. Cross-National Categorisation of Disabilities in Certain OECD Countries

For a comparative discussion concerning the inclusion or integration of students with handicaps into ordinary education systems, types of students and the type of the disability need to be considered. The term ‘handicap’, although used widely in France, is not popular in other countries and the term ‘Special Educational Needs’ (SEN) is used more commonly. However, certain OECD reports show that the term SEN is used very variably across countries. Trying to prevent any complexities among the EU and other countries regarding the definitions in the field, OECD countries agreed upon certain categories as "A", "B" and "C" where: A includes the students whose disability clearly arises from organic impairment, B includes the students who have learning difficulties and, C refer to those who have difficulties due to social disadvantage (Evans, 2003).

The common thing among these categories is the fact that government provides additional resources to help them access the curriculum. Allotment of the national categories differs. Table at below (Table 3.1) shows how the allocation of categories of students with disabilities, difficulties, and disadvantages included in the resources definition to cross-national categories A, B and C change according to the country. EU Member States, Turkey and certain OECD countries are under the inclusion of these categories (Evans, 2003).

Table 3.1. Cross-National Categorisation of Students with Disabilities, Difficulties and Disadvantages

Country	Cross-National Category A	Cross-National Category B	Cross-National Category C
Belgium (Flemish Community)	<ul style="list-style-type: none"> - Minor mental handicap - Moderate or serious mental handicap - Pupils with a physical handicap - Children suffering from protracted illness - Visual handicap - Auditory handicap - Support at home for children who are temporarily ill 	<ul style="list-style-type: none"> - Serious emotional and/or behavioural problems - Serious learning disabilities - Extending care - Remedial teaching 	<ul style="list-style-type: none"> - Educational priority policy - Reception classes for pupils who do not speak Dutch - Travelling children - Children placed in a sheltered home by juvenile court - More favourable teacher/pupil ratio in the schools of the Capital region of Brussels - Additional resources for schools in some municipalities around the Capital region of Brussels and at the linguistic border between the Flemish and the Walloon regions
Czech Republic	<ul style="list-style-type: none"> - Mentally retarded - Hearing handicaps - Sight handicaps - Speech handicaps - Physical handicaps - Multiple handicaps - Other handicaps - With weakened health (Kindergarten only) 	<ul style="list-style-type: none"> - Students in hospitals - Development, behaviour and learning problems 	<ul style="list-style-type: none"> - Socially disadvantaged children, preparatory classes in regular schools

Country	Cross-National Category A	Cross-National Category B	Cross-National Category C
Finland	<ul style="list-style-type: none"> -Moderate mental impairment -Most severe mental impairment -Hearing impairment -Visual impairment -Physical and other impairment -Other impairments 	<ul style="list-style-type: none"> - Mild mental impairment -Emotional and social impairment -Speech difficulties -Reading and writing difficulties -Speech, reading and writing difficulties -Learning difficulties in mathematics -Learning difficulties in foreign languages -General learning difficulties -Emotional and social difficulties -Other special difficulties -Remedial teaching 	
France	<ul style="list-style-type: none"> -Severe mental handicap -Moderate mental handicap -Mild mental handicap -Physical handicap -Metabolic disorders -Deaf -Partially hearing -Blind -Partially sighted -Other neuropsychological disorders -Speech and language disorders -Other deficiencies -Multiply handicap 	<ul style="list-style-type: none"> -Learning difficulties 	<ul style="list-style-type: none"> -Non-francophone students -Disadvantaged children
Germany	<ul style="list-style-type: none"> -Partially sighted or blind -Partially hearing or deaf -Speech impairment -Physically handicapped -Mentally handicapped -Sick -Multiple handicaps -Autism 	<ul style="list-style-type: none"> -Learning disability -Behavioural disorders -Remedial instruction 	<ul style="list-style-type: none"> -Travelling families -German for speakers of other languages
Greece	<ul style="list-style-type: none"> -Visual impairments -Hearing impairments -Physical impairments -Mental impairments -Autism 	<ul style="list-style-type: none"> -Learning difficulties -Multiple impairment 	<ul style="list-style-type: none"> -Socio-economic/cultural educational difficulties

Country	Cross-National Category A	Cross-National Category B	Cross-National Category C
Hungary	<ul style="list-style-type: none"> -Pupils with moderate degree mental retardation -Pupils with visual disabilities -Pupils with hearing disabilities -Pupils with motoric disabilities -Pupils with speech disabilities -Pupils with other disabilities 	-Pupils with mild degree mental retardation	<ul style="list-style-type: none"> -Children of minorities -Disadvantaged pupils/Pupils at risk
Ireland	<ul style="list-style-type: none"> -Visually impaired -Hearing impaired -Mild mental handicap -Moderate mental handicap -Physically handicap -Specific speech and language disorders -Specific learning disability -Severely and profoundly mentally handicap -Multiply handicapped 	<ul style="list-style-type: none"> -Emotionally disturbed -Severely emotionally disturbed -Pupils in need of remedial teaching 	<ul style="list-style-type: none"> - Classes of children of travelling families -Young offenders -Children in schools serving disadvantaged areas -Children of refugees
Italy	<ul style="list-style-type: none"> -Visual impairment -Hearing impairment -Moderate mental handicap -Severe mental handicap -Mild physical handicap -Severe physical handicap -Multiple handicap 		-Students with foreign citizenship
Luxembourg	<ul style="list-style-type: none"> -Mental characteristic -Emotionally disturbed children -Sensory characteristic -Motor characteristic 	-Learning difficulties	-Social impairment

Country	Cross-National Category A	Cross-National Category B	Cross-National Category C
The Netherlands	<ul style="list-style-type: none"> -Deaf children -Hard of hearing -Language and communication disabilities -Visual handicap -Physically handicapped -Other health impairments -Profound mental handicap/severe learning disabilities -Deviant behaviour -Chronic conditions requiring pedagogical institutes -Multiply handicapped 	<ul style="list-style-type: none"> -Learning and behaviour disabilities -Children in vocational training with learning difficulties 	<ul style="list-style-type: none"> -Children from disadvantaged backgrounds
Poland	<ul style="list-style-type: none"> -Light mental handicap -Multiple and severe mental handicap -Profound mental handicap -Blind -Partially sighted -Deaf -Partially hearing -Chronically sick -Motion handicapped -Autistic 		<ul style="list-style-type: none"> -Social disadvantages, behaviour difficulties
Spain	<ul style="list-style-type: none"> -Hearing impaired -Motor impaired -Visual impaired -Mental handicap -Emotional/behavioural problems -Multiple impairment 	<ul style="list-style-type: none"> -Highly gifted -Programmes addressed to students in hospitals or with health problems -Learning difficulties 	<ul style="list-style-type: none"> -Students with compensatory education needs -Problems addressed to itinerant students
Sweden	<ul style="list-style-type: none"> -Pupils with impaired hearing, vision and physical disabilities -Students with mental retardation -Students with impaired hearing and physical disabilities 		<ul style="list-style-type: none"> -Students receiving tuition in mother tongue (other than Swedish) and/or Swedish as a second language -Students in need of special support

Country	Cross-National Category A	Cross-National Category B	Cross-National Category C
Switzerland	<ul style="list-style-type: none"> -Educable mental handicap(special schools) -Trainable mental handicap (special schools) -Multiply handicap (special schools) -Physical disabilities (special schools) -Behaviour disorders (special schools) -Deaf or hard of hearing (special schools) -Language disability (special schools) -Visual handicap (special schools) -Chronic conditions/ prolonged hospitalisation (special schools) -Multiple disabilities (special schools) 	<ul style="list-style-type: none"> -Learning disabilities/introductory classes (special classes) -Learning disabilities (special classes) -Learning disabilities (vocationally oriented classes/special classes) -Behavioural difficulties (special classes) -Physical disabilities (special classes) -Sensory and language impairments (special classes) -Students who are ill (hospital classes/special classes) -Others of the group "special curriculum" (special classes) 	<ul style="list-style-type: none"> -Foreign first language
United Kingdom	<ul style="list-style-type: none"> - Children with statements (records) of special educational needs 	<ul style="list-style-type: none"> -Children with special educational needs (SENs) without statements 	
Canada-British Colombia	<ul style="list-style-type: none"> -Visual impairments -Deaf/Blindness -Multiple disabilities -Hearing impairment -Autism -Moderate to severe to profound intellectual disabilities -Severe behaviour disorders -Physical disabilities or chronic health impairments 	<ul style="list-style-type: none"> -Specific learning disabilities -Mild intellectual disabilities -Mild to moderate behaviour disorders, including rehabilitation -Gifted -Learning assistance 	<ul style="list-style-type: none"> -English as a second language -Aboriginal education programme
Mexico	<ul style="list-style-type: none"> -Blindness -Partial visual disability -Intellectual disability -Auditory or hearing disability -Deafness or severe auditory disability -Motor disability -Multiple disability 	<ul style="list-style-type: none"> - Learning difficulties -Outstanding capabilities and skills 	<ul style="list-style-type: none"> -Compensatory educational needs -Communitary educational needs -Indigenous communitary educational needs -Migrant educational needs

Country	Cross-National Category A	Cross-National Category B	Cross-National Category C
Japan	<ul style="list-style-type: none"> -Blind and partially sighted -Deaf and hard of hearing -Intellectual disabilities -Physically disabled -Health impaired -Speech impaired -Emotionally disturbed 		- Students who require Japanese instruction
USA	<ul style="list-style-type: none"> -Mental retardation -Speech or language impairment -Visual impairments -Orthopaedic impairments -Other health impairments -Deaf/blindness -Multiple disabilities -Hearing impairments -Autism -Traumatic brain injury -Developmental delay 	<ul style="list-style-type: none"> -Emotional disturbance -Specific learning disability 	-Disadvantaged students
Turkey	<ul style="list-style-type: none"> -Visually impaired (includes both blind and low vision children) -Hearing impaired -Orthopaedically handicapped -Educable mentally handicapped -Trainable mentally handicapped -Speech impairment -Chronically ill 	-Gifted and talented	

Source: OECD/CERI. Report, 2003.

The variations due to the type and extent of provision points out the importance of breaking down the SEN group into sub-groups if the educational policy issue of integration is in question. Due to the table above (Table 3.1) it is clear that the categories change in accordance with the country due to its cultural economic and political issues. As the categories increase, governments' provisions of additional resources increase in order to be able to help the disabled students to access the curriculum (Evans, 2003).

3.4. Current Approach in Special Education: Inclusive Education

Inclusive Education defined by UNESCO as a process of addressing and responding to the diverse needs of all learners by increasing participation in learning and reducing exclusion within and from education. The objective of inclusive education is to support education for all, with special emphasis on removing barriers to participation and learning for girls and women, disadvantaged groups, children with disabilities and out-of-school children. The overall goal is a school where all children are participating and treated equally. Inclusive education is concerned with providing appropriate responses to the broad spectrum of learning needs in formal and non-formal educational settings. Rather than being a marginal theme on how some learners can be integrated into the mainstream education system, inclusive education is an approach that looks into how to transform the system so it will respond to the diversity of learners. At the core of inclusive education is the basic right to education, which is rooted in many international human rights treaties since the Universal Declaration of Human Rights adopted in 1948 (Sandkull, 2005). Inclusion is not simply a matter of placement but a philosophy. It is the active participation of the individual in social life. Besides, it secures the preference of the individual from socio-politic point of view (Güven, 2005).

Special education is related to individual model and the inclusive education is related to social model. The role of special education is felt heavily in the starting steps, in the development and evolution of education issues in disability domain where inclusion is the main aim for employment and social cohesion issues.

3.4.1. Inclusive Education in the U.S.A.

In the latter half of the 20th century, legal and legislative action in the United States, particularly the Education for All Handicapped Children Act of 1974, resulted in specific requirements for the education of pupils with disabilities. These actions activated educators to provide to students with disabilities a free and appropriate public education (FAPE) that takes place in the least-restrictive environment (Parent Advocacy Brief, 2005).

3.4.1.1. Individuals with Disabilities Education Act (IDEA)

Legislation set forth that an individualized education program must be developed on the basis of a student's need for special education, and that no students will be turned down because of their handicaps (No Child Left Behind-NCLB). The Individuals with Disabilities Education Act (IDEA) is the federal law of United States enacted in 1990 and reauthorized in 1997 (Parent Advocacy Brief, 2005).

In accordance with final amendments of the Individuals with Disabilities Education Act 2004, the paperwork requirements of IEP have been reduced and the goal of FAPE has been ensured to be provided. Also the legislation is designed to protect the rights of students with disabilities by ensuring that everyone receives FAPE regardless of the extent of the disability. Besides granting equal access to students with disabilities IDEA also provide additional special education services and procedural safeguards (Gartin, 2005).

3.4.1.2. Individualised Education Programmes (IEPs)

Special education services are individualized to meet the unique needs of students with disabilities and are provided in the least restrictive environment. Special education may include individual or small group instruction, curriculum or teaching modifications, assistive technology, transition services and other specialized services such as physical, occupational, and speech therapy. These services are provided in accordance with an Individualized Education Program (IEP), which is specifically tailored to the unique needs of each student under a suitable programme within the framework of an organised education plan. IDEA also grants parental cooperation and participation (Gartin, 2005).

3.4.1.3. Arguments on Inclusive Education in the U.S.A.

The inclusion of individuals with severe disabilities is a hot issue in special education. Arguments for inclusion focus on placing all students, regardless of ability, in regular education classes where their needs would be met by a support staff and the general education teacher. Arguments against inclusion focus on the possible negative

effects on both the special education and regular education students. Specifically, these arguments include 1) the lack of empirical support for inclusion, 2) the possible detrimental effects on general education students, and 3) the inability of general educators to individualize instruction to meet the needs of the severely disabled special education students (Wilson, 1999).

As the trend towards the inclusion of special needs children into regular education classrooms continues, it is important to review Lloyd Dunn's (1968) article and its impact on special education. Dunn challenged the use of the special day class (SDC) model for children labelled educable mentally retarded (EMR). He hypothesized that EMR students would succeed in regular programs. Dunn did not extend his argument to apply to children with severe and profound disabilities nor did he realize the number of features of SDCs that would be sacrificed, i.e., low pupil-teacher ratios, teachers with specialized training, programs with vocational and social goals, greater expenditures per student, and greater individualisation of instruction (MacMillan et al, 1995).

3.4.2. Inclusive Education in the EU

The term "special needs education" has come into use as a replacement for the term "special education" whereas the older term mainly referred to the education of children with disabilities realized in special schools or institutions distinct from the mainstream education and university system (UNESCO, 1997). Member States' current tendency is towards developing policies for the integration of pupils with special educational needs into mainstream schools called the inclusive education (Meijer et al, 2003).

One-track approach

This category includes the countries whose policies and practices are towards the inclusion of almost all pupils within mainstream education. On this kind of settings a wide range of services and support is provided for the pupils with special educational needs. This approach is provided by Spain, Greece, Italy, Portugal, Sweden, Iceland and Cyprus.

Multi-track approach

This category includes the countries that have multiplicity of approaches. They provide a variety of support and services between mainstream and special needs education. Denmark, Ireland, France, Austria, Finland, Luxembourg, the United Kingdom, Latvia, Liechtenstein, the Czech Republic, Estonia, Lithuania, Poland, Slovakia and Slovenia are the countries belonging to this category.

Two-track approach

In this category pupils with SEN are often placed in special schools or special classes. Most of the pupils with special educational needs do not follow the mainstream curriculum among their non-disabled peers. In Belgium development of special needs education is fairly well (Meijer, Soriano & Watkins, 2003).

Table 3.2. Distribution Rates of Pupils with SENs in the EU Countries

	Number of compulsory school aged pupils	%age of pupils with SENs	%age of pupils in segregated provision	Year of reference
Austria	848,126	3.2%	1.6%	2000/2001
Belgium (DE)	9,427	2.7%	2.3%	2000/2001
Belgium (F)	680,360	4.0%	4.0%	2000/2001
Belgium (NL)	822,666	5.0%	4.9%	2000/2001
Cyprus	N/A	5.6%	0.7%	2000/2001
Czech Republic	1,146,607	9.8%	5.0%	2000/2001
Denmark	670,000	11.9%	1.5%	2000/2001
Estonia	205,367	12.5%	3.4%	2000/2001
Finland	583,945	17.8%	3.7%	1999
France	9,709,000	3.1%	2.6%	1999/2000/2001
Germany	9,159,068	5.3%	4.6%	2000/2001
Greece	1,439,411	0.9%	< 0.5%	1999/2000
Hungary	1,191,750	4.1%	3.7%	1999/2000
Ireland	575,559	4.2%	1.2%	1999/2000
Italy	8,867,824	1.5%	< 0.5%	2001
Latvia	294,607	3.7%	3.6%	2000/2001
Liechtenstein	3,813	2.3%	1.8%	2001/2002
Lithuania	583,858	9.4%	1.1%	2001/2002
Luxembourg	57,295	~ 2.6%	-1.0%	2001/2002
Netherlands	2,200,000	2.1%	1.8%	1999/2000/2001
Portugal	1,365,830	5.8%	< 0.5%	2000/2001
Poland	4,410,516	3.5%	2.0%	2000/2001
Slovakia	762,111	4.0%	3.4%	2001/2002
Slovenia	189,342	4.7%	(0	2000
Spain	4,541,489	3.7%	0.4%	1999/2000
Sweden	1,062,735	2.0%	1.3%	2001
United Kingdom	9,994,159	3.2%	1.1%	1999/2000

Source: European Agency and Eurydice, January 2003.

Rates change according to the country .Where some countries register a total of about 1% of all pupils with special educational needs like that of Greece, others register more than 10% like Estonia, Finland, Iceland and Denmark. These different rates of registered pupils with SEN stem from differences in legislation, assessment procedures, funding arrangements and provision. A few countries like Italy changed their educational approaches in order to provide more support and services for the mainstream education. The countries providing SEN settings within the mainstream education highlights the fact

that the curriculum framework should cover all pupils. In almost all of the countries the IEPs plays a significant role regarding the inclusive education (Eurydice, 2003).

3.4.2.1. Key Documents on Inclusive Education in the EU

Regarding the inclusive education, priority is given to the principles laid down by the World Declaration on Education for All, the Salamanca Statement, the Charter of Luxembourg and the Madrid Declaration. These works are not only present a major focal point for inclusive education they are also keystones in the conceptual framework of inclusive education. They are crucial to the establishment of its knowledge base (Meijer et al, 2003). Council Resolution is the key document “on equal opportunities for pupils and students with disabilities in education and training” and composes a base for policy making procedures of EU Member States.

3.4.2.2. World Declaration on Education for All

The nations of the world, speaking through the Universal Declaration of Human Rights, asserted that "everyone has a right to education". Despite notable efforts by countries around the globe to ensure the right to education for all, there were realities persist about problems in access to primary schooling; functional illiteracy is a significant problem in all countries, industrialized and developing; problems in access to the printed knowledge, new skills and technologies and many people failed to complete basic education programmes. These problems constrain efforts to meet basic learning needs, while the lack of basic education among a significant proportion of the population prevents societies from addressing such problems with strength and purpose (UNESCO, 2003).

World people, when combined with the cumulative experience of reform, innovation, research and the remarkable educational progress of many countries, made the goal of basic education for all - for the first time in history - an attainable goal. World Declaration on Education for All and Framework for Action to meet Basic Learning Needs, adopted by the World Conference on Education for All, assembled in Jomtien, Thailand, 5-9 March 1990.

The World Declaration and the Framework for Action recognize the necessity to give to present and coming generations an expanded vision of, and a renewed commitment to, basic education. The Declaration reaffirms that education is a fundamental right for all people, women and men, of all ages. Primary education must be universal, ensure that the basic learning needs of all children are satisfied, and take into account the culture, needs and opportunities of the community. The Declaration firmly asserts the objective of universal basic education. The authors of the Declaration express the foundation of their determination, singly and together, to ensure education for all. Furthermore, the Declaration defines “basic learning needs” as needs comprising both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their capacities to participate fully in development, and to improve the quality of their lives. It urges the nations of the world to intensify their efforts in favour of meeting basic learning needs (UNESCO, 2003).

Paving the road to inclusion began during the 1990s, World Conference on Education for All. There the world’s leaders took up the challenge of exclusion from education by stating that “The learning needs of the disabled demand special attention. Steps need to be taken to provide equal access to education to every category of disabled persons as an integral part of the education system” (Article 3.5).

3.4.2.3. The Salamanca Statement

The delegates of the World Conference on Special Needs Education representing ninety-two governments and twenty-five international organisations, assembled in Salamanca, Spain, from 7-10 June 1994, reaffirmed their commitment to Education for All. They did this by recognizing the necessity and urgency of providing education for children, youth and adults with special educational needs within the regular education system, and further endorsed the Framework for Action on Special Needs Education, that governments and organisations may be guided by the spirit of its provisions and recommendations.

The Salamanca Statement of the UNESCO World Conference on Special Needs Education: Access and Quality (June 1994) states that (Disability Equality in Education, 1997):

- Every child has a fundamental right to education and must be given the opportunity to achieve and maintain acceptable levels of learning;
- Every child has unique characteristics, interests, abilities and learning needs;
- Education systems should be design and educational programs implemented to take into account the wide diversity of these characteristics and needs;
- Those with special educational needs must have access to mainstream schools which should accommodate them within a child-centred pedagogy capable of meeting these needs;
- Mainstream schools with this inclusive orientation are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving education for all. Moreover, they provide an effective education for the majority (without special needs) and improve the efficiency and ultimately the cost-effectiveness of the entire education system.

The statement went on to urge Governments to (Disability Equality in Education, 1997):

1. Give the highest policy and budgetary priority to improve the education system to enable them to include all children regardless of individual differences or difficulties.
2. Adopt as a matter of law or policy the principle of inclusive education, enrolling all children in mainstream schools, unless there are compelling reasons for doing otherwise.
3. Develop demonstration projects and introduce a teacher exchange programme with countries having more experience with inclusive schools.

4. Establish decentralised and participatory mechanisms for planning, monitoring and evaluating educational provision for children and adults with special educational needs.
5. Encourage and facilitate the participation of parents, communities and organisations of disabled people in the planning decision making processes concerning the provision for special educational needs.
6. Invest greater effort in early identification and intervention strategies, as well as in vocational aspects of inclusive education.
7. Ensure that, in context of a systematic change, teacher education programmes, both pre-service and in-service, address the provision of special needs education in inclusive schools.

In the Salamanca Statement, integration of children and young people with special educational needs would be more effective and successful if the following target areas in educational development plans were given priority: (1) Early childhood education to enhance the educability of all children, (2) Girls' education and (3) The transition from education to adult working life (UNESCO and Ministry of Education and Science, 1994).

The Salamanca Statement was inspired by many other works. Education for all is a first step towards an inclusive society. Inclusive education systems whether academic or not, does not only benefit to young people with disabilities but benefit to ALL young people learning from each others' differences and abilities. Therefore Athens Youth Declaration (2003) endorsed the Salamanca statement of 1995 and it called for:

- Considering inclusive education systems at all levels as the most effective means of combating discriminatory attitudes creating welcoming communities, building an inclusive society and achieving education for all
- Fully accessible education systems not only in terms of built environment but also in terms of information, pedagogical material, teaching and learning methods and means of communication in appropriate formats (augmentative and oral communication support systems and alternative communication

systems, Braille, audio-tape, large print, easy-to-read, subtitling, sign language, hearing devices, etc.)

- Disability to be included in the basic formal educational programmes and courses to ensure disability awareness by all young people
- Participation of young people with disabilities and parents or tutors and organisations of young people with disabilities in the planning and decision-making process concerning the provision for those young people with various educational needs, including the right to decide on what kind of education
- To improve assistance to achieve inclusive education
- The use of people with disabilities as resources both in governmental and non-governmental sector, e.g. trainers, educators, ...
- To work towards the elimination of segregated education and special schools, and to support the mainstreaming of special education in general education systems while recognizing the right to choose and more particularly the right for deaf people to choose special or mainstream schools with teaching method in sign language.

3.4.2.4. The Charter of Luxembourg

The Charter is a summary of the main results arising from the study visits, the working sessions and the seminars in the field of integration, within the framework of the Helios Community action programme (February 1993-December 1996). This effort was necessary because there were many works and practices. This document outlines key principles, strategies and proposals that should be taken into account when considering inclusive education or a school for all.

Previous practices identified the models of successful co-operation between mainstream and special education with a view to creating a school for all. The term 'school' should be taken in its broader sense, meaning education at all levels. According to the charter, the individual could only be placed at the centre of each education plan through recognising the potential and the special educational needs for all.

Contribution of the charter mainly depends on bringing a broader picture of the education system into scheme of education. Using a positive holistic approach to determine the potential of people with special educational needs the quality of education improves, so that limitations are not established purely on a medical basis.

Across Europe, there is no agreed definition of special education, special needs or inclusion. Inclusion and special needs in some countries seems to have ever-widening “deficit” definitions. However, there is National and European level agreement upon the principle of inclusion - or a school for all - as being a necessary aim for all pupils (Charter of Luxembourg, 1996), but that a range of provisions maybe necessary to meet all individual pupils’ needs (ICT Working Group C, 2004).

3.4.2.5. The Madrid Declaration

The Madrid Declaration was declared publicly by more than 600 participants from 34 different countries during the European Congress of People with Disabilities held in Madrid in March 2002. The declaration text adopted as the result of a consensus between the European Disability Forum, the Spanish Presidency of the European Union and the European Commission.

The Madrid Declaration puts a start for analysis of the current situation of people with disabilities in the EU. They very often lead to discrimination, social exclusion and poverty. The declaration proposes a general vision, in which disabled people are neither objects of charity and nor patients but independent citizens fully integrated in society.

To achieve this general vision, the Madrid Declaration calls for local and national authorities, disability organisations, employers, media, teachers, parents, decision-makers can contribute to the process that will bring about real equality for all disabled people and their families.

Table 3.3. Shift of Vision in the Madrid Declaration

Away from	Towards
Disabled people as objects of charity	Disabled people as rights holders
People with disabilities as patients	People with disabilities as independent citizens and consumers
Professionals taking decisions on behalf of disabled people	Independent decision making and taking responsibilities by disabled people and their organisations on issues which concern them
A focus on merely individual impairments	Removing barriers, revising social norms, policies, cultures and promoting a supportive and accessible environment
Labelling people as dependants or unemployable	An emphasis on ability and the provision of active support measures
Designing economic and social processes for the few	Designing a flexible world for the many
Unnecessary segregation in education, employment and other spheres of life	Integration of disabled people into the mainstream
Disability policy as an issue that affects special ministries only	Inclusion of disability policy as an overall government responsibility

Source: *The Madrid Declaration* (2003), Official Web Page of the Madrid Declaration; <http://www.madriddeclaration.org/en/dec/dec.htm>, 11.10.2006, p. 1.

3.4.2.6. Equal Opportunities for Pupils and Students with Disabilities in Education and Training (Council Resolution 2003/C 134/04)

The European Council had many efforts within the activities of The European Year of People with Disabilities 2003. Two resolutions adopted are worth to mention, one is the subject of this heading. The council has adopted a resolution on Equal Opportunities for Pupils and Students with Disabilities in Education and Training (2003/C 134/04) on 5.05.2003, one day before (6.05.2003) it has adopted another resolution on accessibility of cultural infrastructure and cultural activities for people with disabilities (2003/C 134/05).

According to the Resolution, the Council of the European Union stresses that a significant number of people with disabilities face difficulties of different kinds in their daily life despite the Treaty establishing the European Community gives the Community

the opportunity to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The importance of European Council resolution on Equal Opportunities for Pupils and Students with Disabilities in Education and Training (2003/C 134/04) is that following this resolution, the Council asked the European Commission to produce an EU Action Plan for 2004-2010 period, establishing a road map for the Commission and the Member States to follow when promoting integration of people with disabilities into society and labour market. So, it could be concluded that EU Action Plan for 2004-2010 is based on this resolution.

The resolution on Equal Opportunities for Pupils and Students with Disabilities in Education and Training (2003/C 134/04) agrees with the impetus of the increased involvement of Governments, support groups, teachers and parents groups, and in particular organisations of persons with disabilities and their families in seeking to improve access to education for those with special needs. However it does not contented with the initiatives in member states and at Community level to ensure that people with disabilities have better access to education and training in a life long learning perspective. According to this council resolution some further and appropriate practicable measures to improve access of persons with disabilities to education and training are needed (article 8). Therefore, the council decided to call the member states and the European Commission, within their respective competencies to improve sharing information and experiences on these matters at European level, involving, as appropriate, the European organisations and networks with relevant experience in this field such as the European Agency for Development in Special Needs Education (article ii).

The European Agency for Development in Special Needs Education is an independent and self-governing organisation, established by our member countries to act as their platform for collaboration in the field of special needs education. It is maintained by the Ministries of Education in the EU member countries (additionally, Malta, Slovakia and Slovenia are observers). Turkey is the only candidate country not to be called to participate to develop cooperation (Massangioli, 2001).

The resolution urges the member states and the European Commission to follow up some efforts as well (article viii). These efforts are related to make lifelong learning more accessible to people with disabilities and, within this context, to give particular attention to the use of new multimedia technologies and the Internet to improve the quality of learning by facilitating access to resources and services as well as remote exchanges and collaboration (e-learning).

The resolution recommends the member states and the European Commission for strengthening the provision of the followings:

- Adequate support of services and technical assistance to pupils and students with special education and training needs (article iv),
- The efforts aiming at the initial and in-service training of teachers in the area of special needs, with a view, in particular, to the provision of appropriate pedagogical techniques and materials (article vi),
- Facilities, training opportunities and resources regarding the transition from school to employment (article ix).

The resolution foresees some facilitating and maintaining framework for the member states and the European Commission in order the above missions be accomplished, depicted as follows:

- **Guidance:** The choosing the appropriate type of education for disabled people themselves or, if necessary, their parents or other responsible persons is crucial. Provision of proper information and guidance should be encouraged for them (article v).
- **Integration and inclusion:** Appropriate education and training for children and young people with special needs in society. Their full integration and insertion in a school system which is adapted to their needs should be encouraged (article i),

- **Accessibility:** All public websites covering guidance, education and vocational training to persons with disabilities should be encouraged to be accessed easily by respecting the web accessibilities guidelines (article iii),
- **Cooperation:** Improvement of the integration of pupils and students with special needs in ordinary or specialized establishments is important. The relevant actors professionally involved in the education and training of children and young people with disabilities in EU should be encouraged to cooperate. (article vii),

The resolution has become a subject in the analytical examination of the *acquis* on Social Policy and Employment Chapter agenda item People with Disabilities in Screening Draft of March 2006. The following related issues and their objectives are as followings (Republic of Turkey, Prime Ministry, Secretariat General for EU Affairs, 2006):

1st Related Issue: The Free Transportation Opportunity for Student with Disabilities Project in cooperation with Prime Minister Administration for Disabled People and The Ministry of National Education Directorate of Special Education, Guidance and Counselling Services

Objective:

- To provide equal opportunity for students with disabilities to access education and training.

2nd Related Issue: The Socrates Grundtvig 2 Learning Partnerships Project "It's All in the Mind"

Objectives:

- To share experiences in this field
- To establish the training and support needs of training/teaching staff
- To allow people with mental health problems to access mainstream learning as opposed to learning within dedicated or specialist environments

3rd Related Issue: The Guidance of Web Accessibility for people with disabilities.

Objective:

- To provide and ease the access of the disabled people to the use of public sector's web sites.

4th Related Issue: Publication of Journal of OZ-VERI (Published by Prime Minister Administration for Disabled People).

Objectives:

- To inform people with disabilities and the community about projects and research conducted on the disability issues,
- To raise awareness on difficulties facing with these people

The third chapter of the study covered the special education issue which is the most important step for social inclusion. A comparative analysis is held on the special education for countries like the EU, USA, OECD, and Turkey. It is put forward that Turkey has special education applications as satisfactory as those of the EU countries. Turkey should carry its attainment and achievement towards connecting it with social policy of the country and with development of transition period and supported employment issues. Next chapter is devoted to conclude the all three chapters of the study.

3.4.3. Inclusive Education in Turkey: Regulation on Special Education Services Decree Law 573 of 30/5/1997

Regular education of Turkey included pre-school, primary school, secondary school, further education colleges, and higher education. Special education is an

important part of Turkish education system. Ministry of Education is responsible for the organisation both of regular education and special education in Turkey. The individuals in need of special education are protected by the Special Education Law 573. This law arranges the services of Special Education. According to the Special Education Law services in Turkey are planned and applied through out the country by Special Education Guiding and Consulting Services Head Office under Ministry of Education. Special Education Services are provided by the teachers who are educated and trained at various educational institutions. However, the teachers who are educated in the field of Special Education are certainly the most important ones for improving the special education services effectively (Cavkaytar, 2006).

Basic Principles

Article 4 - The basic principles of special education are as follows in line with the overall objectives regulating Turkish National Education:

- a) All the individuals who are in need of special education will benefit from the special education services in line with their interests, wishes, adequacies and abilities.
- b) Education of the individuals who are in need of special education will start at an early age.
- c) The special education services will be planned and provided without separating the individuals who are in need of special education from their social and physical environments as much as possible.
- d) It will be a priority to educate those individuals who are in need of special education together with other individuals by taking those individuals' educational performances into consideration and by making adaptations in the aim, content and teaching processes.

- e) Cooperation will be established with the institutions and organisations that provide all types of rehabilitation for the education of individuals who are in need of special education to continue their education at all levels and with all types uninterruptedly.
- f) Personalized education plans will be developed for the individuals who are in need of special education and the educational programmes will be implemented as personalized.
- g) Opinions of the organisations working for the individuals who are in need of special education will be asked for the development of special education policies.
- h) The special education services will be planned so as to cover the social interaction and mutual adaptation process of the individuals who are in need of special education.

Diagnosis, Evaluation, Placement

Article 5 - The individual's educational performance level is determined at each stage of diagnosis; his/her characteristics in the developmental fields are evaluated; the educational goals and services are planned by taking these evaluation results into consideration; and a decision is made in order to place the individual in the most suitable educational environment.

The family opinion is asked the family participates in each stage of the process of diagnosis, evaluation and placement and family.

Early childhood education

Article 6 - The special education services in the early childhood period are provided at home and in the institutions based on the principle of informing and supporting the family.

Preschool education

Article 7 - Preschool education is “compulsory” for the children who are diagnosed as in need of special education. This education is carried out in the special education schools and other preschool institutions. The duration of preschool education of children who are in need of special education can be extended by taking their developmental and individual characteristics into consideration.

Primary education

Article 8 - Prep classes may be established for the children in need of special education who have completed the preschool education or who are at the age of compulsory primary education.

The prep classes aim to prepare the students for formal education in line with their developmental and individual characteristics. The individuals who are in need of special education have education in the primary schools of special education and/or other primary schools. Institutions are established where specially prepared educational programmes can be implemented for those students who cannot meet the goals of compulsory primary education in line with their performance levels in the developmental fields.

Secondary education

Article 9 - The students who are in need of special education have secondary education in the special education schools and/or other general, vocational and technical secondary schools.

Higher education

Article 10 - The necessary special measures are taken for the students who are in need of special education benefit from the higher education possibilities in line with their interests, wishes, abilities and adequacies.

Informal education

Article 11 - Informal education programmes are organized for the individuals who are in need of special education in order to improve their basic life skills, meet their learning needs and prepare them for work and profession in different subjects and periods in line with the basic principles of special education. The informal education programmes which aim to have the families and friends of the individuals who are in need of special education take active roles in the individual's developmental process and improve their life skills together with these individuals are emphasized.

Integration

Article 12 - The education of individuals who are in need of special education is provided in the schools and institutions at each level and with each type together with their peers in line with the personalized educational plans.

Education in special education schools

Article 13 - Education is provided to the students who need to be educated in a separate school or institution together with their peers who have similar inadequacies in special education schools and institutions through making arrangement based on the appropriate combining models.

Special educational support

Article 14 - Special education support is provided to the individuals who are in need of special education in order to realize the goals of educational programmes at each level and of each type. Individual and group education possibilities are provided to meet this goal.

Educational programmes which aim to develop the basic life skills and meet the learning needs are provided to those students who are in need of special education but cannot be educated in any educational institution regardless of their level of deficiency.

Educational programmes

Article 15 - The special education programmes are adapted to the individual in terms of the programme goals and implemented by taking the individual's educational performance into consideration.

Regular school programmes are implemented in the specific education schools and classrooms. However, certain arrangements are made in the mentioned programmes by taking into consideration the student characteristics and learning adequacies so that equality is not disrupted. Programmes of the special education schools and classrooms are prepared with an approach which aims to have the students acquire certain qualifications necessary to continue their education with their peers in regular schools.

Special educational programmes may also be implemented in the special education schools and classrooms in which the durations and contents are prepared according to the students' characteristics. Issues such as the recognition of diplomas or certificates to be given to those who complete these programmes and transition to an upper level of educational institution as well as the rights exercised by the students will be determined by the Ministry.

The business and vocational education programmes which prepare the individuals who are in need of special education for business life in line with their interests, needs and abilities are provided by emphasizing the practice so as to enable the individual perform the job or profession with the necessary qualifications.

Evaluation

Article 16 - The students in need of special education who are educated together with their normal peers are evaluated according to the class passing and exam regulations of the school they attend and in terms of realizing the goals determined by the educational plan. However, the necessary measures are taken and the arrangements are made during the exams by also taking the individual and developmental characteristics and deficiencies into consideration.

The evaluation is primarily based on the progress in terms of realizing the goals of personalized educational programmes for the evaluation of students who are educated in the special education schools and classrooms.

Special education, guidance and psychological counselling services

Article 17 - Special education guidance and psychological counselling service units are established in each province in order to organize the guidance and psychological counselling services and special education services in education and training institutions; to make sure that the services are coordinated; and to monitor and evaluate the services. These units are affiliated to the directorate of national education and chaired by the provincial director of national education or branch director.

The special education guidance and psychological counselling services are provided by this unit in the provinces.

Special education schools

Article 18 - Special education day or boarding schools are established for the individuals whose conditions force them to have special education in a separate school in line with their deficiencies and characteristics.

Special education classes may be established in the special education schools for students who have more than one deficiency.

The room and board expenses of the individuals who participate in informal education programmes established in special education schools and the students who participate in family training programmes in the said schools are borne by the Ministry throughout the educational period.

Special Education Institutions

Article 19 - Special educational day institutions may be established in order to provide special education support to the individuals who are in need of special education or to prepare them for business and profession, or to improve the basic life skills and

meet their learning needs for those whose condition does not enable them to benefit from the formal education programmes.

The students in need of special education who participate in business and vocational courses in the special education institutions which aim to prepare them for business life exercise the rights given to the apprentice students by the Law No. 3308 on Apprenticeship and Vocational Education dated on 5th June 1986.

Special education in other schools and institutions

Article 20 - The individuals in need of special education whose conditions enable them to have education together with their normal peers continue their education in the public and private preschool education, primary education and secondary education schools. Supplementary classrooms are established in these schools in order to provide special education support to the individuals who are in need of special education; special tools and equipment are provided; and other preventive measures are taken.

Special education classes may be established in the preschool education, primary education and secondary education schools for students whose conditions force them to have education in a separate classroom.

Such implementations are also made in the apprenticeship and informal education activities.

Guidance and research centres

Article 21 - The guidance and research centres determine, examine, and diagnose the individuals who are in need of special education; suggest the most suitable educational environment for placing those individuals; and provide supportive education, guidance and psychological counselling services as well as working to make sure that the guidance and counselling services in education and training institutions are provided in the most efficient and effective way possible.

Guidance and research centres may also be established in the centre and other sub-provinces according to the population and service potential.

Guidance and psychological counselling service units

Article 22 - Guidance and psychological counselling service units are established in order to provide guidance and psychological counselling services to the individuals who are educated in the formal and informal educational institutions. They also provide those services to the individuals who are in need of special education.

These units cooperate with the other guidance and research centres within their region while providing the guidance and psychological counselling services.

Establishing schools and institutions

Article 23 - The special education schools and institutions are established by the Ministry.

The real and artificial persons may establish special schools or institutions in accordance with the Law No. 625 on Special Education Institutions in order to provide education and training to the individuals who are in need of special education.

The Ministry can provide support such as personnel for education and training services and programme support to the institutions and schools whose shares belong to the associations and foundation working entirely for the benefit of society which are established in accordance with Law No. 625 on Special Education Institutions in order to increase the quality level of these institutions' services and lower the students' costs.

Special education in public and private educational institutions

Article 24 - The public and private primary schools and secondary schools and informal education institutions are responsible for providing special education services to the individuals living in their periphery who are in need of special education.

The necessary measures are taken in the mentioned schools and institutions to make sure that the individuals in need of special education are educated or trained.

Personnel

Article 25 - The education and training class personnel needs of the special education schools and institutions and the institutions which support special education are met as a priority; the needed personnel is assigned directly or through establishing cooperation with the other institutions and organisations.

Inspection and Control

Article 26 - Inspectors who are experienced in special education and/or guidance and psychological counselling perform the inspection and control activities in the special education schools and institutions and the institutions which support special education.

Special education tools

Article 27 - All the tools and equipment required for the individuals who are in need of special education to continue their education and training efficiently in the public schools and institutions are provided by the Ministry.

Repealed regulations

Article 28 - Law No. 2916 on Children in Need of Special Education dated on 12th October 1983 have been repealed.

Table 3.4. Quantitative Developments in Special Education in Turkey between the Years 1990-2005

Years	Number of Schools	Number of Students			Total Number of Students	Number of Teachers ***
		In Special Education Schools	In Special Education Classes	In Inclusive Education		
1990-1991	68	7848	9970	3934	21752	
1991-1992	78	7955	9587	5084	22626	
1992-1993	88	9005	10867	5539	25411	
1993-1994	102	9403	10867	5730	26000	
1994-1995	134	10386	9870	5906	26162	
1995-1996	157	11472	8439	10184	30095	1854
1996-1997	215	11839	10287	9718	31844	1906
1997-1998	247	13018	7924	10516	31479	2076
1998-1999	249	13669	7927	10946	32542	2413
1999-2000	308	14164	6831	17724	38719	2402
2000-2001	342	15838	6862	23915	51923	2355
2001-2002	419	17320	6912	29074	53306	2834
2002-2003	440	17988	6912	31708	56608	3385
2003-2004	468	19895	7405	35625	63194	3481
2004-2005*	494	22082	8130	42225	72437	4506
2005-2006**	508	25238	8921	45532	79691	4680

*By September ** By January *** GRCs are not included
Source: MoNE Statistics, 2005.

Table 3.5. Number of Students in Inclusive Education According to the Disability Group in Turkey in 2005-2006

Number of Schools	Type of disability	Branch	Male	Female	Total
7422	Children with Speech impairment	1551	1519	850	2369
	Educable Mentally Retarded	16816	19806	12649	32485
	Visually Impaired	744	674	510	1184
	Hearing Impaired	1396	1189	985	2174
	Orthopaedically Disabled	1200	1208	784	1992
	Children with emotional/behaviour problems	545	558	165	683
	Autistic Children	2649	2689	1547	4206
	Gifted and Talented Children	251	250	118	
	TOTAL	25247	27622	17603	45532

Source: MoNE Statistics 2005-2006

According to the data of the above tables (Table 3.4 and Table 3.5.) 79,691 students with disabilities benefit from the education services in Turkey both in inclusive education and special schools. 603,840 people are under the age of 15 which is the age for compulsory 8-year- basic education. When compared to the total number of students with disabilities in need of basic education which is 603,840 (whereas the number is due to the data of Turkey Disability Survey) it comes out that 524,149 students do not benefit from the education services of any kind which is a very serious outcome in spite of the fact that the primary school education for the students with disabilities is compulsory as set forth by the Regulation on Special Education Services Decree Law 573 of 30/5/1997.

CHAPTER IV

4. CONCLUSION AND DISCUSSION

This study concludes and discusses that as one of the disadvantaged groups people with disabilities still face discrimination in the fields of employment and education despite all efforts to eliminate the legal, social and attitudinal barriers hindering their full participation.

4.1. Conclusion

A comparative discussion covering the situation in the EU, Turkey and USA is carried out. Since the concepts of employment and education are the key elements for social inclusion and welfare, the effect of discriminative attitude is felt heavily, so as a result employment and education have become my primary research area. Legislative, conceptual and social aspects of discrimination and disability in many EU countries are studied. The situation in Turkey is also studied and comparisons on employment and education are made. Similarities and differences among the related legislations, social policies and social indicators of EU countries and Turkey are put forward.

Comparison of Certain Disability Issues in the EU and Turkey

This platform is to provide a comparative study on the conceptual structure of disability anti-discrimination, anti-discrimination provisions, basis of social policies on disability and accessibility focusing on education and employment of the disabled in EU and in Turkey. Similarities, differences and deficiencies in the related subjects from the perspective of both EU and Turkey have been put forward as far as the data made it available. USA is also referred when required.

Conceptual Structure of Disability Anti-discrimination in the EU and Turkey

The study puts forward the evolution of disability concept starting from rehabilitation to mainstreaming and inclusion. It places the social model in disability concept rather than those models which were developed on impairment and functional limitations.

The adoption of social model in EU has attracted criticism. European welfare states operate many benefits and measures. Their structure can be examined critically from the social model perspective. The social model challenges some of the basic values and assumptions supporting the European welfare states as well as the use of criteria to determine who belongs to the category of disabled for the purposes of social provisions. However, it does not include aspects of categorisation other than the use of medical norms. Categorisation still exists in many areas of disability. The social model might imply that it would be desirable to mainstream disability provision. Provisions for the disabled within the policies managed by the main employment service could be incorporated within employment. It is observed that some member states have moved in this direction.

It is determined that the issues discussed above are not resolved by the EU institutions in their support for the social model. There exist problems about mainstreaming and relying on general rights provided for disabled people. Superior provisions are made for the special category of disabled people. General rights are not be defined in such a way as to recognise the particular needs of the disabled people. The resources allocated to disabled people under general provisions may be reduced by competition from other needy groups, such as the elderly.

From the perspective of Turkey, it can be said that there is not a specific model of disability definition. However, since the harmonisation with the EU acquis is in question, it can be considered from the social model point of view.

In parallel with the developments observed in the definition and conceptualisation theme of disability which led to the development of social model and social policies an anti-discrimination policy was also developed. This anti-discrimination policy has a

history of progression through three main stages namely individual justice model, group justice model, and mainstreaming model. There is a parallelism between progressions achieved in social policy and anti-discrimination policy on disability issues.

Anti-discrimination Provisions on Disability in the EU Countries and in Turkey

In the anti-discrimination and social policy domains on disability, the Framework Equal Treatment Directive (FETD) does not require Member States to introduce measures to achieve equality of results. The FETD does not contain explicit provisions creating positive duties to promote equality, but it does urge member states to step in this direction through the promotion of social dialogue and dialogue with non-governmental organisations. Anti-discrimination law could provide an alternative set of principles through which the principles and assumptions governing policies towards disabled people can be opened up for fresh investigation. From this perspective, the concepts of anti-discrimination and equal treatment raise issues about the principles and assumptions governing social policies towards disabled people.

The disability anti-discrimination legislation in selected EU countries namely Denmark, Finland, France Ireland, the Netherlands, Sweden and the UK are briefed as the best practice models. The main legal provisions in EU15 countries together with the countries newly joined and countries in accession negotiations are studied as per constitutional provisions and statutory provisions. It was concluded that in Austria, Belgium, Denmark, Germany, Greece, France, Luxembourg, The Netherlands, Portugal and Finland there are not specific statutory disability provisions in their legislations. In other words, they do not have a specific anti-discrimination legislation. Anti-discriminative provisions are supported by constitutional provisions. However, all the EU15 member states have specific employment provisions for people with disabilities.

Disability anti-discrimination issues in Turkey are held under three folds: mainstreaming issue in disability policy of Turkey, anti-discriminative clauses in Turkey and the bodies for promotion of equal treatment. Mainstreaming is studied as per Disability Law (No. 5378, 2005), the Decree Law on Special Education (No. 573, 1997),

Labour Law (No. 4857, 2003), Constitution (1982), and Penal Code (No. 5237, 2004) in Turkey.

When studied from Turkey's perspective, it is concluded that there is not a specific antidiscrimination legislation. However, the below mentioned provisions of the Turkish Disability Law of 1/7/2005 which is the most comprehensive legislation adopted recently have anti-discriminative provisions on disability. Article 1 of the related law encourages the participation of the people with disabilities in the society; Article 14 prevents any discriminative attitude towards people with disabilities and article 15 states that the right of education of the disabled people cannot be prevented by any reason. The disabled children, youngsters and adults are provided with equal education as the non-disabled people and in inclusive environments by taking the special conditions and differences into consideration.

Turkish Disability Law prevents and prohibits all kinds of discriminative attitude towards people with disabilities and provision of equal opportunities both in employment and education fields are the priority areas of interest. Prevention of disability, removal of barriers, promotion of personal dignity, solving the problems of the disabled people face in everyday life, supporting the independent living of people with disabilities and promotion of accessibility are the main objectives of the Turkish Disability Act.

Basis of Disability Social Policies in the EU: Action Plan on Disability and Turkey's Projects in the Field

There are a number of treaties, regulations, directives, decisions, recommendations, opinions, resolutions and the case-law of the EU on disability.

According to the Article 13 of the EC Treaty , the EU constituted a three-part strategy (two directives and one action program) to combat discrimination: a Directive to implement equal treatment irrespective of racial or ethnic origin (Council Directive 2000/43/EC); a Directive establishing a framework for equal treatment in employment and occupation on the grounds of religion or belief, disability, age and sexual orientation (Council Directive 2000/78/EC) and the Community Action Programme 2001-2006

(Decision 2000/750/EC) to combat discrimination on the grounds on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The Action Plan of the EU can be briefed in three stages. The first stage is gathering, integration and coordination of people with disabilities in the EU which were completed by 2005. The second stage is the period 2006-2007 for harmonisation of legislations among the member states. The new actions foreseen for the second phase of the DAP will encourage activity and promote access to social services while fostering accessible goods and services. Moreover, reliable and comparable statistical data on disability and information on multiple-discrimination will be gathered. The Commission will monitor implementation of the proposed actions through a continuous dialogue with all the stakeholders concerned. Mid-term evaluation of the Action Plan will take place in 2008 as planned.

The union plans to reach the year 2010 ready to declare a Disability Law. The thematic dialogue with the EU High Level Group on Disability (HLGD) plays strategic role in Disability Action Plan from political point of view within the EU.

A broad consensus is observed in the EU on the need to involve with disability issues. Emphasis is placed on dignity, fundamental rights, and protection against discrimination, fairness and social cohesion. Disability actions are chiefly the responsibility of the member states and are most effectively dealt with at national level. Increased mainstreaming of disability under the EU Action Plan, with operational support from the European Social Fund, contributes to equal opportunities in the enlarged Europe. Positive dialogue between the Commission and Member States as well as with disabled people and main stakeholders allows progress in establishing an enabling environment to support active inclusion into society and the economy. As a result, it is now widely acknowledged that mainstreaming is a key to advancing disability issues. In this respect, there is much greater emphasis on mainstreaming of disability at member states level.

The study also highlights the link between social exclusion and discrimination and the findings reveal that significant improvements should be made with regard to access to education, implementation of employment rights and equalisation of opportunities in

many aspects of social life both in the EU countries and in Turkey. When studied from the EU perspective, in accordance with the outcome of this study, a more developed cooperation between European Commission, member states, candidate countries, non-governmental organisations (NGOs) must be established in order to develop harmonised strategies and implement effective social policies.

Accessibility and Information Technologies for the Disabled in the EU and in Turkey

Access to Quality Support and Care Services, Accessibility, improvements in the Analytical Capacity and Capability are the other issues with high priorities in the field of disability studies in the EU.

Some of the projects of the EU in the domain of accessibility and information technology are as mentioned : (1) AVANTI (Added Value Access to New Technologies and services on the Internet), (2) CARE HERE (Creating Aesthetically Resonant Environments for the Handicapped, Elderly and Rehabilitation), (3) CYBERVOTE (An innovative cyber voting system for Internet terminals and mobile phones), (4) ISCOM (Information Systems for Combined Mobility Management in Urban and Regional Areas), (5) MAPPED (Mobilisation and Accessibility Planning for People with Disabilities), (6) MICOLE (Multimodal collaboration environment for inclusion of visually impaired children), (7) SYNFACE (Synthesised talking face derived from speech for hearing disabled users of voice channels), (8) TETRA (Development of Tendon force Transducer for neuroprostheses), (9) THINK (Towards Handicap Integration Negotiating Knowledge), (10) WEB CONSYS (WEB-based, wireless CONference info-SYstem), (11) CATCH 2004 (Converse in Athens, Cologne and Helsinki), (12) “Seeing is believing” thanks to cognitive vision (COGVIS), and (13) tactile feedback for the visually impaired and handicapped (Mouse RSI sufferers) market for helping handicapped and visually impaired PC users projects. Corresponding accessibility and information technology projects in Turkey are limited as compared to the ones of the EU listed above.

Regarding the Turkish projects there are currently eleven Turkish projects held in parallel with the EU legislation, namely: (1) The Free Transportation Opportunity for Student with Disabilities Project, (2) The Socrates Grundtvig 2 Learning Partnerships Project "It's All in the Mind", (3) The Guidance of Web Accessibility for people with disabilities, (4) Publication of Journal of OZ-VERI (Published by Prime Minister Administration for Disabled People), (5) "Barrier Free" Campaign Project, (6) Vocational Rehabilitation and Sheltered Workshops Project "Rainbow", (7) The Socrates Grundtvig 2 Learning Partnerships Project for The Systems of Integration of People with Disabilities into Labour Market, (8) National Database for People with Disabilities Project, (9) Project on 183 Hot Line for Social Services and People with Disabilities, (10) The Portal of National Newborn Hearing Screening Project, and (11) Project on Research and Projects Data Bank of People with Disabilities.

There are six more projects in the future agenda of Turkey on disability issues, namely: (1) Guideline (TS 9111 The Standards of Building Arrangement for People with Disabilities), (2) Strategic Plan on Improving Administration Capacity of Administration for Disabled People in the framework of Public Administration Reform, (3) Model of Social Rehabilitation Centre for People with Chronicle Mental Disorder, (4) Organisation of REHACARE International Care and Rehabilitation Days, (5) Meeting of Administration for Disabled People together with the ICF team from World Health Organisation, and (6) The Model of Independent Living Centre.

It can be concluded that there are efforts on accessibility and information technologies in the field of disability and accessibility in Turkey. Harmonisation in these related fields may be slow but decisive.

Social Indicators on the People with Disabilities and Employment in the EU and in Turkey

In this thesis, I have provided a comprehensive statistical data to present the various facets of disability issues in the EU. However, it is quite a difficult effort to model the situation of all disabled people analytically throughout Europe. Briefly, in the EU there exist some 44.6 million people aged between 16 and 64 who consider that they have a long-standing health problem or disability representing around 16% of the overall

EU working age population. This proportion is reported as 12, 3% in Turkey. However, due to the inadequacy of the records or unwillingness of the people with disabilities to report, this rate might be higher. Elderly people and people with long-standing health problems may distort the statistical data.

Findings indicate that 37% of disabled people were employed compared to 64.2% of the non-disabled. 21% of disabled people are unemployed and around 42% of them are dependent on disability benefits in the EU. In Turkey, 22, 2% of people with a disability participate in the labour force where the rest 77, 8% of them do not. A rate of 16, 9% (13, 1% of people with disability) of those who could not participate in the labour force is unemployed. The level of employment of people with disabilities in Turkey is much lower than in the EU as a result of accessibility problems and low government support.

It should be indicated that although European social policy encourages the employment of people with disabilities, there is a vast majority of people with disabilities dropping out of working life. On the other hand, the employed ones get lower salaries in general.

Researches show that the prejudice of employers (an important discrimination issue) is the most important reason of being unemployed in the EU. Employment of the disabled is a low degree occupational involvement where most of the people with disabilities work in low paid jobs in the EU.

Unemployment is closely related to social exclusion and discrimination. According to the respondents to the questionnaire within the framework of this study, the main reasons for the unemployment or inactivity of the disabled in the EU countries are: the prejudice of the employers, the lack of education and training, and the severity of their disability, followed by the lack of adaptation of the workplace, and finally the lack of psychological support and guidance. Moreover, a high %age of respondents have indicated that the existence of a “benefit trap” preventing disabled people to access to part or full time jobs without losing the necessary income support was also to be listed among the barriers to employment.

Disability anti-discrimination and special education issues are projected on the employment of people with disability issue in this study. Thus, these three issues are selected as the most important concerns in the field of disability studies.

Legislation on Special Education and Inclusive Education in the EU and in Turkey

The chapter on special education concludes cross-national categorisation of disabilities in certain Organisation for Economic Cooperation and Development (OECD) countries. Inclusive education as the current approach in special education is held in the EU, U.S.A. and Turkey. Inclusive education in the EU is held under one-track, two-track and multi-track approaches; in USA, the Individuals with Disabilities Education Act (IDEA), and in Turkey, Regulation on Special Education Services Decree Law 573 of 30/5/1997.

In spite of the fact that the pre-school education for the disabled students is compulsory besides 8-years basic education in accordance with the Regulation on Special Education Services Decree Law 573 of 30/5/1997 in Turkey, and again this very law welcomes the education of all children on the basis of equal opportunities, the schooling rates of the disabled students who benefit from the basic education in Turkey is only 5% and this rate is considerably low for the people living in rural areas. In the researches this rate is 60% for the students with disabilities participating in the mainstream education and about 40% for the students who benefit from education services in special schools in the EU countries and there is a huge difference between the schooling rates among Turkey and the EU countries. Despite the above mentioned legislation supporting the compulsory education in Turkey for the students with disabilities there are defects stemming from the implementation of the related legislation. Although it was set forth by the related legislation, it is widely ignored in practice. Similarly, in accordance with the Article 24 of the Regulation on Special Education Services Decree Law 573 of 30/5/1997 “the public and private primary schools and secondary schools and informal education institutions are responsible for providing special education services to the individuals living in their periphery who are in need of special education”. However, since most of the mainstream schools and special schools are within the borders of major provinces like

İstanbul, Ankara, Izmir etc. the children residing in the rural areas cannot benefit from the services although it was set forth by the related article. Again, there is the problem of implementation of the related legislation.

It should be emphasised that although the schooling rates in the EU countries is relatively high for the primary education, it was proved by the researches that disabled people residing in the EU countries have limited access to second and third level of education when compared with the rest of the population and furthermore there are high %age of dropouts particularly at secondary school level. This might be due to the failure of the education system to integrate them fully into schools. Exclusion of the disabled students from mainstream education is a form of discrimination. Non-discrimination legislation should include education together with its areas of application.

Considering the inclusive education in the EU countries, it appears that distribution rates of pupils with disabilities change according to the country. Where the policies and practices of certain countries like Spain, Greece, Italy and Cyprus are towards the inclusion of all pupils with the mainstream education, in countries like France and Belgium the effect of segregated/separate education is felt heavily and the difference stems from cultural, economic and political issues.

Key documents on inclusive education in the EU are namely, the World Declaration on Education for All, the Salamanca Statement, the Charter of Luxembourg and the Madrid Declaration. The common point of all is to include the children with disabilities into the mainstream education as much as possible in the framework of equal opportunities and right to education, raise awareness regarding the rights and needs of the children with disabilities starting from the early ages and most important of all to prepare and integrate the children with disabilities into social and working life.

Agency Structures on Disability Administration in the EU, Turkey and USA

Different countries in the world have different agency structures for dealing with administration of disability issues and non-discrimination against the handicapped. In the EU, the disability policies are tailored by the European Council (The Council of European Union), and researched and implemented by the European Commission. In

USA the disability issues are in the field of Department of Justice. Turkey, as well, has a central agency for disability issues which is the Prime Ministry Administration for Disabled People.

The shift of institutions dealing with people with disability from charities to non-profit organisations means that public institutions are prepared to be drawn back from involvement of disability issues in the EU. Instead, private institutions are ready to take part in the system. Member states of the EU may soon deliver the practice of involving with people with disabilities to private institutions and be contended with supervising the disability system and paying the benefits. Wealthy countries of the EU thus will be on the safe side of human right claims.

Other issues on Disability from the Perspective of the EU

There are other issues on disability that should be indicated from the EU perspective that have considerable importance for the prosperity and sustainability of the Union.

Freedom of Movement of the Disabled from the Perspective of the EU

Certain problems appear regarding the freedom of movement of the people with disabilities. The lack of mutual recognition of national decisions on disability and the impact of this on disabled people moving within the Union is a deep concern. The Commission is seeking ways for the understanding and comparison of different definitions, for example by establishing general concepts and descriptions.

Aging Society of the EU and Employment of the Disadvantaged Groups

Employment of people with disabilities carries great importance for the EU since the aging population of Europe calls for the necessity to include the disadvantaged groups including people with disabilities into the labour force of Europe as a considerable contribution for social welfare and prosperity.

4.2. Discussions and Recommendations

Beyond constitutional protection, the most common legal method of combating discrimination in the EU countries appears to be a system of scattered anti-discrimination clauses arranged on a sectoral basis in areas such as education rather than an autonomous law on discrimination applying across different areas. The UK appears as the only European country that has a well organised legislation on disability. On the other hand, France is found as the country with weighted institutionalism which leads to disability discrimination to certain extent. Hungary is one of the European countries that (on 1.02.2005) composed the Equal Treatment Authority (Egyenlő Bánásmód Hatóság) following its accession (Citizens against Racism and Discrimination (CARD), 2006).

Despite the fact that the Council of the EU and European Commission act like advisory bodies for member countries in their development of disability policies and implications, this may be true for the first two stages of the Disability Action Plan on disability. It is quite apparent that the EU will soon declare a Disability Law upon entering the third stage of the Disability Action Plan. These indicate the EU's need on accumulation of facts to form its basis for an anti-discrimination legislation as a state rather than a regional union. Bringing its scattered parts into a soft inclusive piece could be observed in many of European policies. Turkey with its old and/or grand state convention follows a more centralised and autonomous approach to disability and integration issues.

Experts have mostly reported quite negative views on Turkey in regard to anti-discrimination (European Commission, 2003, KE-54-03-203) and mainstreaming (Massangioli, 2001) of disability issues. This fact may depend on the lack of dialogue and coordination between Turkey and the EU agencies in the past. In fact, Turkey succeeded to make transpositions to the EU regulations in its numerous legislations (including disability anti-discrimination and mainstreaming) on human rights issues recently in its accession negotiations. In the screening process of legislations in Turkey on disability issues in social policy and employment, it is depicted that Turkey has more than satisfactory structures, projects and legislations, and the agenda for future plans on

disability issues (Republic of Turkey, Prime Ministry, Secretariat General for the EU Affairs, 2006).

According to the above mentioned comparisons, it could be concluded that Turkey's disability policy is in parallel with the EU disability policy. Moreover, Turkey has satisfactory applications on disability as many member states of the EU. It is worth to recommend for Turkey that it should find out for better and clearer connection of its social policy with its disability policy. Besides, there is one more important issue missing in disability agenda of Turkey when compared with those of the EU: efforts should be paid by Turkey in order to start working on the arrangements for transition from school to supported employment period. Surely, there are some steps taken in this regard in Turkey but they should be supported to bring them to a more comprehensive level as compared to efforts of the EU.

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ANNEX

Situation of disabled people in the enlarged European Union: the European Action Plan 2006-2007, Communication from the Commission to the European Parliament, the European Economic and Social Committee and the Committee of the Regions, COM (2005) 604 final, Brussels, 28.11.2005, Commission of the European Communities, Annexes (Annex 2)

2. EDUCATION, TRAINING AND YOUTH POLICIES AND PROGRAMMES		
PRIORITY ACTION	ACTION	INSTRUMENTS RESULT
Assessing DG EAC Community Programmes in the course of 2005 from the viewpoint of equal opportunities.	Mainstreaming of disability issues in evaluation of DG EAC programmes.	Evaluation from the perspective of equal opportunities and disability will provide guidance for the post-2006-programmes in active citizenship, culture, education, training and youth.
Incorporating special needs of people with disabilities in e-learning.	e-Learning action programme	e-Learning programme 2004-2006 legally equipped to effectively promote the use of ICT among disabled persons. Decision n° 23 18/2003/EC of 5 December 2003.
Improving the PLOTEUS information system on life long learning opportunities	Mainstreaming of disability issues and ongoing evaluation	The PLOTEUS information system on lifelong learning opportunities in Europe is being updated and new PLOTEUSII programme is being prepared.
Incorporating disability issues into the lifelong learning concept and processes.	Promotion of active mainstreaming through dialogue and consultation	A working group on active citizenship, equal opportunities and social cohesion, established in 2003, produces policy recommendations and/or concrete materials to support progress to target disadvantaged groups. A draft Communication on efficiency and equity issues in education and training will be submitted to the Commission for consideration in 2006.
Incorporating disability issues into the life long learning concept and processes.	European Year of Education through Sport (EYES)	During the year 2004 the European Commission financed 195 projects to increase awareness of the potential of sports as a tool for education and social inclusion. Out of these 37 projects aimed at using sport as a toll to integrate socially disadvantaged groups including people with disabilities. http://www.europa.eu.int/comm./sport/action_sports/aees_en.html#evaluation