

# Reception of asylum seekers with disabilities in Europe

Ana Beduschi-Ortiz

**With regard to the reception of asylum seekers in the European Union, provisions for the protection of people with disabilities are found in a wide range of regulatory sources.**

Full and effective participation in society by people with disabilities implies the obligation to provide them with specific protection. EU Directive 2003/9 specifies that national legislation must take into account the specific situation of vulnerable people, such as those with disabilities, with regard to material reception conditions. In all cases, their specific needs should be individually assessed. This means that EU Member States should provide “medical or other necessary assistance” to asylum seekers with particular needs. In the case of disabled asylum seekers, this is all the more necessary when they are processed in administrative reception centres which are often not adapted to their specific needs.

Although the Directive makes it an obligation on Member States to take into account specific situations with regard not only to disabled persons but also minors, the elderly, pregnant women and victims of violence, Member States enjoy a wide margin of interpretation in the implementation of the obligation. Although it respects the principle of institutional and procedural autonomy, the text of the Directive could have gone further in determining the content of the obligation itself. It therefore leaves national legislators with the duty of determining the extent of the “other necessary (assistance)”.

## Administrative detention

In November 2007 an EU report confirmed that Member States had satisfactorily translated Directive 2003/9 into national legislation.

However, it acknowledged that a number of social rights were not being respected in practice and that, because of the extensive discretionary power granted to national authorities, the protection of asylum seekers was not homogeneous across the Union. The Commission emphasises that, even if the detention of asylum seekers with specific needs is not prohibited, it should only be used as a last resort – and that its use must be duly justified. This

find themselves in administrative detention centres. Clearly, asylum seekers who have specific needs because of a disability should receive specific treatment or assistance, adapted to their needs, although the Directive does not state the extent of this. It falls to Member States to define the conditions for its implementation, which could, in effect, remove all substance from the obligation.

## Social rights

A number of Member States do not guarantee effective access to social rights for asylum seekers. Apart from

the general and rather fluid obligation to take into account the specific situation of vulnerable asylum seekers, including those with disabilities, the Directive does not define the means by which the States should conform to this obligation. Thus nothing is specified concerning, for example, the obligation to make reasonable adjustments to the working environment to facilitate the integration of disabled workers despite the EU’s stated commitment to eliminating

discrimination at work. Similarly, nothing is specified with regard to social security, although the European Court of Human Rights has clearly stated that nationality must not be the sole criterion determining the scope of application for benefits for a disabled adult.

The situation of a disabled asylum seeker is therefore very precarious, even if certain basic social rights are provided for in general by the Directive.

Ana Beduschi-Ortiz (anabeduschi@hotmail.com) is a PhD student in the Faculty of Law of the University of Montpellier 1 (IDEDH – European Human Rights Law Institute).



is not what happens. Recourse to administrative internment has been legitimised, legalised and frequent. This practice, which should be considered exceptional, has thus become commonplace. The situation becomes all the more worrying when it concerns the reception and administrative detention of disabled asylum seekers.

Directive 2003/9 also specifies that Member States should ensure that asylum seekers, when they lodge their application for asylum, have access to reception conditions that “guarantee a standard of living which is adequate for health and guarantee subsistence for applicants” – including when they