



**CP-PACK**

Module 2

**TRAINEE BOOKLET**

# **Legal and Financial Matters - (LFM)**

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This training module was produced in the scope of CP-PACK project and in accordance with the Need Analysis Report derived from the results of the focus group interviews and questionnaires collected among parents and teachers of children with cerebral palsy. This is primarily a theoretical training module, which is based on the international legal instruments regulating rights of people with disabilities and on the main legal framework available in partners' countries. This training module should be used as a starting point on how to deal and understand applied law. This module is not and cannot be understood as a legal counselling.

# Chapter 1

## Legal status of a person with CP at international and EU level

### Learning Outcomes

Trainees will be expected to;

1. understand to what extent the international and EU legal framework can be implemented in their countries
2. understand what can be done to have an improved and more appropriate national legal system.

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The main international and European document in the field of the rights of people with disabilities is the Convention on the Rights of Persons with Disabilities and its Optional Protocol, adopted on 13th December 2006 at the United Nations Headquarters in New York. The Convention entered into force on the 3rd of May 2008.

Countries that join in the Convention engage themselves to develop and carry out policies; laws and administrative measures for securing the rights recognized in the Convention and abolish laws, regulations, customs and practices that constitute discrimination.

As a change of perceptions, it is essential to improve the situation of persons with disabilities, and ratifying countries are supposed to combat stereotypes and prejudices and to promote awareness of the capabilities of persons with disabilities.

Countries are to guarantee that persons with disabilities enjoy their inherent right to life on an equal basis with others, ensure the equal rights and advancement of women and girls with disabilities and protect children with disabilities.

Children with disabilities shall have equal rights, shall not be separated from their parents against their will, except when the authorities determine that this is in the child's best interests, and in no case shall be separated from their parents on the basis of a disability of either the child or the parents.

Countries are to recognize that all persons are equal before the law, to prohibit discrimination on the basis of disability and guarantee equal legal protection.

Countries are to ensure the equal right to own and inherit property, to control financial affairs and to have equal access to bank loans, credit and mortgages. They are to ensure access to justice on an equal basis with others, and make sure that persons with disabilities enjoy the right to liberty and security and are not deprived of their liberty unlawfully or arbitrarily.

Countries must protect the physical and mental integrity of persons with disabilities, just as for everyone else, guarantee freedom from torture and from cruel, inhuman or degrading treatment or punishment, and prohibit medical or scientific experiments without the consent of the person concerned.

Laws and administrative measures must guarantee freedom from exploitation, violence and abuse. In case of abuse, States shall promote the recovery, rehabilitation and reintegration of the victim and investigate the abuse.

Persons with disabilities are not to be subjected to arbitrary or illegal interference with their privacy, family, home, correspondence or communication. The privacy of their personal, health and rehabilitation information is to be protected like that of others.

On the fundamental issue of accessibility, the Convention requires countries to identify and eliminate obstacles and barriers and ensure that persons with disabilities can access their environment, transportation, public facilities and services, and information and communications technologies.

Persons with disabilities must be able to live independently, to be included in the community, to choose where and with whom to live and to have access to in-home, residential and community support services. Personal mobility and independence are to be fostered by facilitating affordable personal mobility, training in mobility skills and access to mobility aids, devices, assistive technologies and live assistance.

Countries recognize the right to an adequate standard of living and social protection; this includes public housing, services and assistance for disability-related needs, as well as assistance with disability-related expenses in case of poverty.

Countries are to promote access to information by providing information intended for the general public in accessible formats and technologies, by facilitating the use of Braille, sign language and other forms of communication and by encouraging the media and Internet providers to make on-line information available in accessible formats.

Discrimination relating to marriage, family and personal relations shall be eliminated. Persons with disabilities shall have the equal opportunity to experience parenthood, to marry and to found a family, to decide on the number and spacing of children, to have access to reproductive and family planning education and means, and to enjoy

equal rights and responsibilities regarding guardianship, wardship, trusteeship and adoption of children.

States are to ensure equal access to primary and secondary education, vocational training, adult education and lifelong learning. Education is to employ the appropriate materials, techniques and forms of communication. Pupils with support needs are to receive support measures, and pupils who are blind, deaf and deaf-blind are to receive their education in the most appropriate modes of communication from teachers who are fluent in sign language and Braille. Education of persons with disabilities must foster their participation in society, their sense of dignity and self worth and the development of their personality, abilities and creativity.

Persons with disabilities have the right to the highest attainable standard of health without discrimination on the basis of disability. They are to receive the same range, quality and standard of free or affordable health services as provided to other persons, receive those health services needed because of their disabilities, and not to be discriminated against in the provision of health insurance.

To enable persons with disabilities to attain maximum independence and ability, countries are to provide comprehensive habilitation and rehabilitation services in the areas of health, employment and education.

Persons with disabilities have equal rights to work and to gain a living. Countries are to prohibit discrimination in job-related matters, promote self-employment, entrepreneurship and starting one's own business, employ persons with disabilities in the public sector, promote their employment in the private sector, and ensure that they are provided with reasonable accommodation at work.

Countries are to ensure equal participation in political and public life, including the right to vote, to stand for elections and to hold office.

Countries are to promote participation in cultural life, recreation, leisure and sport by ensuring provision of television programmes, films, theatre and cultural material in accessible formats, by making theatres, museums, cinemas and libraries accessible, and by guaranteeing that persons with disabilities have the opportunity to develop and utilize their creative potential not only for their own benefit, but also for the enrichment of society. Countries are to ensure their participation in mainstream and disability-specific sports.

Countries are to provide development assistance in efforts of developing countries to put into practice the Convention.

To ensure implementation and monitoring of the Convention, countries are to designate a focal point in the government and create a national mechanism to promote and monitor implementation.

A Committee on the Rights of Persons with Disabilities, made up of independent experts, will receive periodic reports from States parties on progress made in implementing the Convention.

An 18-article Optional Protocol on Communications allows individuals and groups to petition that Committee once all national recourse procedures have been exhausted. It is to be underlined that petition right can be used only if the national authority in charge is not providing or granting the right according to the Convention's provisions and the interested person has followed all the national procedures in order to achieve these rights. The Committee examines the complaint and the observations of the State, and on this basis formulates its views and recommendations, if any, forwards them to the State, and makes them public.

The following distinction is made by the World Health Organization between impairment, disability and handicap:

**Impairment:** Any loss or abnormality of psychological, physiological, or anatomical structure or function.

**Disability:** Any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.

**Handicap:** A disadvantage for a given individual, resulting from an impairment or disability, that, limits or prevents the fulfilment of a role that is normal, depending on age, sex, social and cultural factors, for that individual.

The following definitions are developed from that perspective. The relevant terms of action proposed in the World Programme are defined as prevention, rehabilitation and equalization of opportunities.

Prevention means measures aimed at preventing the onset of mental, physical and sensory impairments (primary prevention) or at preventing impairment, when it has occurred, from having negative physical, psychological and social consequences.

Rehabilitation means a goal-oriented and time-limited process aimed at enabling an impaired person to reach an optimum mental, physical and/or social functional level, thus providing her or him with the tools to change her or his own life. It can involve measures intended to compensate for a loss of function or a functional limitation (for example by technical aids) and other measures intended to facilitate social adjustment or readjustment.

Equalization of opportunities means the process through which the general system of society, such as the physical and cultural environment, housing and transportation, social and health services, educational and work opportunities, cultural and social life, including sports and recreational facilities, are made accessible to all.

## Legal status of a person with CP at national level

In different countries, there are different approaches to the legal status of persons with Cerebral Palsy. These approaches vary from a specific and special legal framework for individuals with CP to a more general one, where individuals with CP are included in the more general category of persons with disabilities (in certain countries, the term used is persons with handicaps). The situation of affected children is, consequently, differentiated. In some countries, children with CP are considered to be a distinct category within the general category of children with disabilities. In other countries, children with CP have no special statute comparing with other children with disabilities..

Despite these differences, all EU countries recognise and grant several rights to all persons with disabilities, including children. Depending on the national legislation and administrative systems, these rights are grouped taking into account the different levels of social needs of persons with disabilities. In order to facilitate the international approach on the topic of legal status of a person with CP, a screening of the main rights was made and the rights were grouped under two categories. One category comprises those rights that are granted ex-officio. These kinds of rights are recognised by simply proving of the status of the person, without any other administrative formality. Another category of rights comprises rights granted under the condition of fulfilling certain administrative procedures.

Children with a disability, including children with cerebral palsy (CP), benefit of the following rights:

- Protection of their health, prevention, treatment and recovery, education and professional training,
- Social support, meaning social services and social benefits,
- Home, arrangement of personal life environment, transportation, access to the psychical, informational and communication environment,
- Opportunities for leisure, access to sport, culture and tourism,
- Legal support,
- Financial benefits,
- Evaluation and re-evaluation at home for persons who cannot be moved, made by the evaluation commission within a certain period.

### A little law practice!

Identify three topics of interest for you in the international convention. Motivate your choice. Now, describe to what extent those international provisions are included in the national law.

Name at least 5 differences between what is written in the international legal instrument and the actual implementation in practice. Try to explain why these can happen.

How can an individual legally ask to have his/her international recognised rights acknowledged in actual practice?

### Suggested Readings

- Convention on the Rights of Persons with Disabilities and its Optional Protocol, adopted on 13 December 2006 at the United Nations Headquarters in New York. The Convention entered into force on 3 May 2008.
- Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by the United Nations General Assembly resolution 44/25 of 20 November 1989
- Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children or Hague Convention 1996



## Chapter 2

### Administrative support for disabled and CP persons

#### Learning Outcomes

Trainees will be expected to;

1. understand how the public administrations work
2. understand how the responsibilities of observing the rights of people with disabilities are shared between different entities

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Observance of rights of persons' with handicaps lies usually on local administrative authorities. Complementary or subsidiary role on observing these rights lies on central administrative authorities, civil society and families or legal representatives of persons with handicaps. In this respect is to be noted that a better implementation of legal framework for persons with disabilities can be achieved through cooperation between local administrative authorities and NGO's.

Depending on the specificity of administrative systems in each country, different public or private entities in charge with administrative support for children with CP can be identified. In some countries, there are in place administrative procedures for registering persons with CP. In other countries, persons with CP are not registered on the basis of their specific diagnosis, but on the basis of the gravity of the disability.

Since CP has a variety of legal approaches, this module will use mainly the general term of disability.

There are several rights of persons with disabilities and several obligations of institutions and organisations, which are considered special. When these rights are breached and obligations are not fulfilled, there are established financial penalties against the irrespective institutions or organisations. The designated authority enforces the penalties. Interested persons must announce the rights breaches and the non-fulfilment of obligations.

When a right is granted upon an individual request, non-granting of the right or the delay in granting can be subject for a case in front of the court of justice. Usually there are ex-officio lawyers able to support the persons to open the case and the opening of case and legal support are free of charge.

The above mentioned rights and obligations are:

- a. Free and equal access of persons with disabilities to any form of education,

- b.** The right of persons with disabilities, within educational process to:
    - » Supportive educational services,
    - » Technical equipment adapted to the disability,
    - » School manual and courses accessible to pupils and students with visual impairments,
    - » Use of assistive equipment and software during the examinations.
  - c.** Once per year, a free of charge place in recreational camps for children with disabilities together with their personal supporting assistants.
  - d.** The obligations of public authorities in relation with persons with disabilities access to education providers to:
    - » Promote and grant access to education and professional training of the persons with disabilities,
    - » Assure home education for persons with disabilities which can not be moved during the compulsory education and education through the involvement of supporting/travelling teachers,
    - » Assure access to continuous education according to the needs of persons with disabilities,
    - » Support cooperation between main or special education and families or community,
    - » Support the professional training of teachers from regular education in order to allow them to adapt the educational practices for pupils with disabilities,
    - » Assure the sport practice to any person with disabilities and the training of teachers for specific medical and technical practices,
    - » Assure educational support services for persons with disabilities and their families through special psycho-pedagogy specialists,
    - » Assure access in educational organisations.
  - e.** To grant priority to the persons with disabilities to rent an apartment at lower buildings' flats in public owned buildings
  - f.** Persons with severe disabilities have the right to a supplementary room in the rented apartments and to the lowest level of renting price. The same right is recognised to the family or legal representative of a persons with severe disabilities during the care period,
  - g.** Child with disabilities and accompanying person benefit of free entrance to shows, museums, performances,
  - h.** In order to assure public transportation of persons with disabilities, the local public authorities are obliged to buy adapted public transportation vehicles or to adapt the existing vehicles and to create transportation programmes for persons with disabilities
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- i. Persons with severe and marked disabilities benefits of free urban public transportation,
- j. Persons with severe and marked disabilities benefits of a number of free long-distance travels on public transportation,
- k. The relevant public authorities are obliged to take the required measures in order to facilitate the transition of young persons with disabilities to the system of protection for adults,
- l. Obligation to grant the right of social support in the form of social services upon request or ex officio,
- m. Obligation to admit a person with disabilities into a residential centre when home care or other types of community services are not possible,
- n. The organisations are obliged to adapt buildings, to arrange and allow access to parking places on the benefit of persons with disabilities,
- o. Obligation of publishing houses to make available digital patterns used to print books and magazines in order to be transformed in a format accessible to persons with visual impairment,
- p. Obligation of public libraries to established sections with books for persons with visual or reading impairment,
- q. Obligation of phone companies and bank services operators to make available services and information services to the persons with disabilities,
- r. Hotel owners obligation to adapt at least one room for persons with disabilities, to mark with tactile signs the entrance and reception and to mount elevators with tactile signs
- s. Public and private authorities and organisations obligations to make available for their public relations interpreters for persons with hearing impairment and to make available other information services to persons with disabilities. These measures apply to internet available services as well
- t. Employers with more than a certain numbers of employees are obliged to employ at least a percentage of their staff from persons with disabilities or to pay to public budget a special tax
- u. The protected units have the right of exemption on payment of certain taxes.

### **Administrative provisions on the benefit of education and therapy of children with disabilities/CP**

Each European country has created different systems to support education and therapy of children with disabilities/CP. Depending on the general administrative and legal framework, these supportive systems are public, private or a combination of the other two.

The most common approach in each country is the establishment of a public body to deal with children with disabilities/CP. Depending on the local conditions, there are kindergarten, schools or other facilities. The facilities can be integrative, where children with CP are hosted together with children without disabilities, half-integrative, where children with CP are educated and treated together with other children with disabilities or specialised facilities, dedicated only to children with CP.

On the other hand, in most of the countries, there are specialised facilities that can provide specialised, professional therapy for CP and other, similar disabilities and impairments.

Since CP is not a very common disability, it is possible to find that a specialised education or therapy facility is not available in the proximity of the child and his/her family.

Teachers and therapists need to know that, according to the international and EU treaties and conventions, they are entitled to ask and receive with priority different kind of support from public authorities. For instance, the public authorities must introduce in their budgets the required amounts to support the development and improvement of activities of schools, therapy centres and of other facilities designated to support children with disabilities/CP.

### **A little law's practice!**

Using your common knowledge, name the authorities or organisations in charge with adaptation of the homes of people with disability.

Verify your opinion using the written law.

Motivate each of the following assumptions:

- The family have the main legal obligation on protecting the rights of the family members with disabilities.
- The public authority is obliged only to provide advices and some financial support.

### **Suggested Readings**

Guidance available on public authorities websites, on private, specialised, organisations or on international organisations websites (UNESCO, UNICEF, UN)

## Chapter 3

### Logistic support for persons with disabilities/CP

#### Learning Outcomes

Trainees will be expected to;

1. better understand the differences between different types of psychological support
2. be able to avoid confusion between various types of support

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Since a person with CP is a person with disabilities, the general right of persons with disabilities apply to them as well. The logistic support might cover free access to various services, reduced prices to different services, accessibility in premises and buildings, access to free or reduced prices supportive devices and techniques, modified supportive services, materials and techniques and so on. Some of these rights are granted upon a individual request and other are assumed to be granted ex officio by different organisations.

It is to be noticed that in many cases the logistic support for persons with disabilities is recognised as a general right. In this respect, an individual is not entitled to ask individually for these rights, which are incumbent to public or private organisations. For instance, the right of access and the associate support can be granted by the meaning of marked tracks on the access-ways, accessible buses for wheelchairs etc.

Generally, the support might cover:

- a. Right to have a personal accompanying assistant
- b. Free medical devices, free medical treatment and medicines
- c. Free ticket to SPA treatment for the person with disabilities and his/her personal accompanying assistant
- d. Free accommodation and meals services in hospitals, SPA facilities and other similar services
- e. Parking-free permit for persons with disabilities
- f. Extra-room in public-owned buildings in case of rented home
- g. Access to a public supporting centre for children with disabilities without a family or other supportive persons
- h. Right to have a specialised interpret during the legal procedures in order to facilitate communication
- i. Access to therapy and supportive public facilities.

## **Logistic measures to be taken by schools on the benefit of children with disabilities/CP**

Schools, therapy centres and other facilities designated for children with disabilities/CP need to know that public authorities must provide them with several types of supportive devices or works.

For instance, the public authorities have to support the specialised organisations, public or private, to build ramps, install elevators or escalators. Also, the public authorities need to provide specialised organisations with assistive technologies and devices as:

- Books, games, educational materials
- Wheelchairs, neck, backbone, leg, arms supporting devices, adapted chairs and tables

It is important to know that certain types of support for schools can be provided using indirect manners. In this respect, the research and development for new or improved assistive devices are available usually to universities and research institution. In order to reach such support, schools needs to ask such research entities to develop common projects to be funded.

Also, in many countries, the responsibilities to support schools and therapy centres are shared by different public bodies. For instance, a ministry or other national-level authority might have in their budget the required amount of money to be used for supportive and assistive technologies and a different public body to cover the expenses to modify and adapt buildings.

Nevertheless, all teachers, therapists and other staff working with children with disabilities/CP are entitled to ask to participate in various trainings in order to develop their competencies. In many countries, the training systems for teachers and therapists do not cover adequately the training needs of teachers and therapists. In order to overcome this situation, teachers and therapists need to know that there are available several funding opportunities to participate to international training events (conferences, seminars etc.).

On the other hand, schools are able to cooperate with NGOs and other private organisations. In many cases, this cooperation can have a shape of “hosting” organisation, were a school can allow a private organisation to develop its own supporting actions on the benefit of children with disabilities/CP.

### **A little law practice!**

Make a list of the rights granted by a public body as a normal functioning approach.

Make a list of the situations when a legal right was not granted by the public authority in charge.

### **Suggested Readings**

Guiding materials provided by different authorities and NGOs

## Chapter 4

### Financial Support for Persons With Disabilities/CP

#### Learning Outcomes

Trainees will be expected to;

1. know which financial support needs to be asked for
2. understand the difference between money payment as financial support and other types of support

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Usually, the financial support is granted according to a specific procedure fulfilled by the persons with disabilities, or, in case of children with disabilities, by their parents. Financial support can be granted to the person only and/or to their family members (parents) or personal accompanying assistant.

In case of financial support for children, usually parents needs to accomplish several administrative procedures in order to reach the support. More often these procedures are very simple and can be fulfilled after the childbirth. In other cases, the disability certificate or other registration proof needs supplementary papers or procedures in order to lead to a support.

Financial support measures:

- Exemption on payment of hire in case of rented house within public-owned buildings
- Paid holidays with a variable duration and within certain amounts for one of the parents of a children with disabilities, depending on the gravity of the disability.
- Free access to tickets to museums, shows and performances and other similar cultural and sport events. This right is granted also to the personal accompanying assistant
- Free tickets and subscriptions to public system transportation, both on local, mid-range and long-distance transportation. Depending on each administration regulations, the free tickets and subscriptions can cover unlimited trips on all transportation means or a certain number of travels on specific means of transportation. This right is granted also to the personal accompanying assistant
- Exemption on tax over houses, buildings or land, when these properties are owned by a person with disabilities

- Public-supported interest over bank loans needed to cover the expenses for modification of houses or procurement of supportive devices and adapted vehicles
- Exemption on tax for adapted motorised vehicles
- Monthly fee when the parents or family of a child with disabilities decide to have no personal accompanying assistant for the child.
- Increased or supplementary monthly fee for children with disabilities until the age of adulthood.

### **Financial support from which schools can benefit in relation with children with disabilities/CP**

Public-owned schools are directly financed by public budgets. This means that public budgets have to cover all types of expenses which may be incurred by the education and therapy of children, including the financial coverage for educators and therapists training. In order to receive the needed financial support educators and therapists need to formally submit their request to schools management and to the public authorities as well.

Public-owned therapy centres have they expenses covered as well by the public budget. Thus, comparing with educational entities, the patients will pay an amount of money in order to benefit of certain types of therapy.

In case of private-owned schools and therapy centres, their expenses are covered usually from donations or payments made by the children's families. Thus, even private-owned schools or therapy centres are entitled to receive financial incentives from public budgets. In order to happen this, these organisations must comply to certain criteria and conditions. The public financial support will cover mainly the expenses for a minimum level of educational or therapy services.

### **A little law practice!**

Without using any guidance, fill in a request form you think is necessary to ask for financial support. Now, use the guidance presented in the legal paper and fill in, again, the same request form. Take note on the differences and discuss them with your fellow trainees

Explain why it is not necessary for a solicitor to know exactly all the details needed for using official forms.

### **Suggested Readings**

Informational materials about how to reach the support to which disabled/CP children are entitled.



## Chapter 5

### How to Obtain Support to Which Persons are Entitled

#### Learning Outcomes

Trainees will be expected to;

1. Avoid confusions and mistakes during the requesting process
2. Know what to do when a request is not approved
3. Make the best use of all the legal facilities

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The actual support can be obtained after fulfilling a certain administrative procedure by the child's parents. The basic procedure is the registration of the child after birth. In this case, the registration is made on the basis of the parent declaration alongside with a medical certificate to prove the existence of disability and its gravity.

In some countries other individual rights are granted upon a specific and more elaborated administrative procedure. For instance, assistive devices can be provided only if parents submit a formal request and other official document to an authority in order to receive the devices as such or an equivalent amount of money. On the other hand, there are countries where NGOs or other private organisations are entitled to process the requests from parents.

In order to receive an individual support, the parents need to know exactly what procedure they have to fulfil. The actual grant of support may vary very much in a specific country from case to case. When a request does not receive a positive answer it is advisable for parents to either sue the public authority or to ask for help to an NGO dealing with persons with disabilities.

#### How to obtain the support to which schools are entitled

Depending on which specific country, the public support for educational or therapy centres is granted according to the legal status of the entity. The public-owned entities must submit each year a formal request for budget. Teachers and therapists may propose to the entities' management their proposal for educational materials, therapy tools or training.

In case of private-owned entities, first they must comply with the conditions of public financed private organisations. Then, every year they submit the request for money and at the end of the year the organisations will report on how they spent the money.

Private support can be reached by submitting requests to various sponsors or donors, according to their rules. Some donors support organisations only, while others make grants or other types of support available to individuals as well.

### **A little law practice!**

Which are the reasons for not granting a specific right?

How long took until a request for a right was positively answered?

Except the basic request, which other actions were taken in order to receive the legal support?

### **Suggested Readings**

Attorneys of law and specialised NGOs websites, forums