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NEWS REPORT

Country:	Cyprus
Title:	Adoption of children by persons with disabilities
Date:	20 February 2015
Expert:	Corina Demetriou
<u>Context</u>	
Issue at stake:	The Ombudsman locates discrimination in the procedure followed by the Social Services regarding the adoption of children by persons with disabilities
Ground of discrimination:	Disability
Source:	Position of the Ombudsman/Independent Mechanism for the monitoring of the implementation of the CRPD regarding the assessment of the suitability of persons with disabilities by the Social Welfare Services for the purposes of adopting children, File No. A/P 343/2014, decision dated 31 January 2015.
Field:	Access to services
Applicable law:	Law on persons with disabilities (N.127(I)/2000), as amended; UN Convention on the rights of persons with disabilities (CRPD).

Content

In February 2014 a married couple where both spouses had kinetic disabilities lodged a complaint at the Ombudsman's office¹ regarding discriminatory and prejudicial treatment by the Social Welfare Services (SWS) when they applied for a permit to adopt a child. The Ombudsman's office in its capacity as monitoring body for the CRPD issued an opinion regarding the right of persons with disabilities to adopt children whilst the application of the couple to the SWS for this permit was still pending. The opinion set out the following findings of the investigation as regards the procedure and approach followed by the SWS:

- The SWS asked the complainants to undergo an assessment of functionality² by the Department for the Social Integration of Persons with Disabilities of the Ministry of Labour. When they refused, the SWS asked them to undergo an assessment by a psychologist from the

¹ The Ombudsman's office also performs functions of Equality Body, independent mechanism for the monitoring of the implementation of the CRPD and NHRI. A complaint directed at the Ombudsman's office may be investigated in any of these capacities and often in more than one of such capacities. For the sake of brevity, this flash report will refer to the 'Ombudsman' as the investigating capacity, although the investigation was carried out through a combination of capacities.

² In 2014 the Department for the Social Integration of Persons with Disabilities introduced a test based on an international standard known as ICF (International Classification of Functioning, Disability and Health), details for which are available at http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd06_gr/dsipd06_gr?OpenDocument, in order to assess the degree of functionality of persons with disabilities and thus determine their eligibility to welfare benefits. The confederation of disability organizations KYSOA has expressed its reservations and objections regarding this system, which is according to KYSOA based on and promoting the medical rather than the social model of disability.

Mental Health Department. The SWS did not clarify whether it asked all applicants for adoption to undergo this test or whether only persons with disability had to undergo this assessment.

- Throughout their contact with the complainants, in every document and in every correspondence sent to the complainants, the SWS repeatedly demonstrated prejudice and expressed doubts as to the complainants' ability to respond to parental duties, focusing on the couple's 'inability' to 'properly' participate in society in accordance with standards referring to non-disabled persons. References contained in these documents suggested that the SWS did not accept that kinetic disability presupposes the use of reasonable accommodation, supportive means and care services to promote the social integration of persons with disability.³
- The SWS did not examine the possibility of the provision of state support or assistance in the exercise of the complainants' parental duties.

The opinion found that this approach violated the non-discrimination provisions of the CRPD and in particular article 5, which includes respect for family life, and article 23 which requires signatories to take measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family and parenthood. In light of the fact that the adoption procedure inevitably involves a wide discretion on the part of SWS officers, the Ombudsman recommended to the Minister of Labour and Social Insurance that the competent authorities:

- Provide training and education, as a matter of priority, to all SWS officers on the CRPD and the rights and concepts enshrined in it, with emphasis on combating discrimination, stereotypes and prejudices relating to disability.
- Design and plan the practice to be followed when assessing the suitability of persons with disability as regards adoption of children, including safeguards against disability discrimination in the spirit set out by the CRPD. The design should foresee that the assessment must take place after the adoption of measures in support of couples with disability who express an interest in adopting children.

Internet link source and additional information:

http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_gr/presentationsArchive_gr?OpenDocument

³ This despite the fact that in 2014 the disability law was amended to extend the duty to provide reasonable accommodation to persons with disability to fields beyond employment: Law amending the Law on Persons with Disabilities N. 63(I)/2014, available at http://www.cylaw.org/nomoi/arith/2014_1_63.pdf (see flash report No 1276-CY-119, of 13 June 2014).