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DOCUMENT 1-868/80/ANNEX

ANNEX

to the report by Mrs Ann CLWYD drawn up on behalf
of the Committee on Social Affairs and Employment

on the motions for resolutions concerning the
economic, social and vocational integration of
disabled people in the European Community with
particular reference to the International Year
of Disabled Persons 1981

- Opinion of the Legal Affairs Committee -

Draftsman : Mr I. DALZIEL

On 23 May 1980 the motion for a resolution (Doc 1-205/80) was referred to the Legal Affairs Committee for its opinion.

At its meeting of 25 June 1980 the Legal Affairs Committee appointed Mr Dalziel draftsman of its opinion

On 22/23 January 1981 the committee held an exchange of views following an introductory statement by the draftsman.

On 15 January 1981 the Chairman wrote to the President to ask for authorisation to extend the scope of the opinion to cover the other motions for a resolution (Docs 1-25/80, 1-26/80, 1-27/80 and 1-180/80) being considered together by the Social Affairs Committee; authorisation was granted on 23 February 1981.

On 25/26 February 1981 the committee considered the draft opinion and adopted it unanimously.

Present: Mr Ferri, chairman; Mr Dalziel, rapporteur; Mr Fischbach, Mr Giummarra (deputizing for Mr Modiano), Mr Janssen van Raay, Mr Sieglerschmidt, Mr Tyrrell, Mr Vié, Mr Welsh (deputizing for Mr Turner).

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INTRODUCTION

1. Disabled people are affected by every area of legislation whether at national or Community level which affect non-disabled Community citizens. At national level, there is general agreement on the need for positive discrimination in favour of disabled people to ensure their integration into society, but Member States have widely differing approaches both to the legal definition of disablement and to the legal and administrative means of assisting disabled people. At Community level, although the EEC Treaty contains a number of provisions on social policy, and on freedom of movement and freedom of establishment, there is no specific mention of disabled people. This has meant that Community action in their favour has been both piecemeal and inadequate.

2. Mr GHERGO's motion for a resolution proposed the accession of Member States and of the European Community itself to Council of Europe resolutions on the granting of facilities to handicapped persons and the introduction of a European Pass for the handicapped to enable them to enjoy the rights allowed them under Article 48 of the Treaty. The proposal is for reciprocity between Member States in the facilities granted, in order to help those disabled people in the Community who wish to travel to other Member States. It raises problems of information, definition and implementation.

3. Sufficient information as to what facilities are offered under national legislation is at present not available: for example, a comprehensive comparative study was carried out by the Commission on the legal, administrative and technical aspects of the rehabilitation of handicapped persons in Community countries⁽¹⁾, but it dates back to 1974; in other important areas even less information has been collected on a Community-wide basis; this can be attributed to the small number of Commission staff allocated to this area. Without such information Community legislative action is likely to be ill-conceived and ineffective. On the question of definition, Member States differ widely, so considerable work has to be done to decide who should be entitled to benefit from the facilities available. Moreover, it raises a major problem, common to all legislation in favour of disabled people, when the fact of defining a disablement may lead the disabled person being isolated, a problem which could be acute in the context of a special pass for the handicapped. In order, therefore, to decide whether reciprocity between Member States is feasible, there needs to be an analysis of the full range of treaty provisions which may serve as a basis for legislative action in the social field.

(1) Commission Docs. Nos 3219/74, 4095/74 and 3120/75.

4. The motion for a resolution thus raises the whole question of how best to further the interests of disabled people in the Community by the means available under Community law. It would clearly be particularly appropriate for the International Year of Disabled People to mark a more positive, comprehensive and equitable approach to legislative action in favour of the disabled. This is why the Legal Affairs Committee, originally consulted only on Mr Ghergo's resolution, decided that it should also consider the legal aspects of all the motions for a resolution on disabled people currently being considered by the Social Affairs Committee.

5. This opinion, therefore, first deals with the general legal aspects of Community action in favour of the handicapped. It then discusses the particular problem of the legal means and legal bases for Community action which are available within the framework of the Community Treaties. Our specific proposals for Community action in favour of disabled people, drawn from the points made in parts II and III are set out - in part IV - in the form of paragraphs which could be included in Parliament's resolution.

II. Legal Aspects of Community action in favour of disabled people

6. It should first be recalled that one of the chief aims of the International Year of Disabled People is the participation, equality and integration of disabled people in society. Member States' experience has shown that this can best be achieved by a combination of specific projects and legal provisions in favour of the handicapped. Indeed, the principle of positive discrimination is present in the laws of all Member States to assist disabled people to participate on equal terms with those who are not handicapped.

7a) The European Court of Justice has held that the general principles of law common to Member States may be considered to be part of Community Law¹. Positive discrimination could be considered by the Court to be one of these general principles of law. Action in this field should therefore be taken at Community level to ensure that disabled people are able to exercise the rights they share with all Community citizens.

7b) The same applies for organisations supported by private donation whose aim is to further the interests of disabled people. This is one area where positive discrimination in favour of such organisations, particularly in the field of indirect taxation, should be practised.

¹ See for example Case No 4/73 (Nold) 1974 ECR at page 513

8. Great care needs to be taken when deciding on the means by which disabled people are required to prove their entitlement to facilities provided for their benefit. The Commission has affirmed, in its programme for 1980, its commitment to the creation of a European Health Card for all Community nationals. By issuing a Health Card to all Community nationals, able-bodied and disabled, those who are disabled might feel less conspicuous in benefiting from the facilities available to them, than might otherwise be the case. The Legal Affairs Committee will shortly give further consideration to this problem during its work on the European Health Card.

III. Legal bases for Community Action

9. Since the Community Treaties do not contain specific provisions empowering the Community Institutions to legislate in favour of disabled people it is necessary, when considering what action is to be taken at Community level in favour of the disabled, to analyse the legal means available within the framework of the more general Treaty provisions on social policy.

10. In the opening provisions of the EEC Treaty, the establishment of a common definition of and approach to these social and economic obligations and duties is part of the task assigned to the Community by Article 2 of the EEC Treaty. In Article 3 there is a general political, economic and legal basis for fostering the interests of disabled people in the common policies of the Community, in particular:

- Art 3(c) the abolition, as between Member States, of obstacles to freedom of movement for persons, services and capital;
- Art 3(e) the adoption of a common policy in the sphere of transport;
- Art 3(h) the approximation of the laws of Member States to the extent required for the proper functioning of the Common Market;
- Art 3(i) the creation of a European Social Fund in order to improve employment opportunities for workers and to contribute to the raising of their standard of living.

Unfortunately, in none of these activities have the Community institutions placed sufficient emphasis on the interests of disabled people.

11. A more specific legal basis for Community action in favour of the disabled is provided by Article 117 of the EEC Treaty. Here the Member States agree upon the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonisation while the improvement is being maintained. The Member States further agree "that such a development will ensue not only from the functioning of the common market, which will favour the harmonisation of social systems, but also from the procedures provided for in this Treaty and from the approximation of provisions laid down by law, regulation or administrative action". There has also been insufficient action under this provision in the interests of disabled people.

12. Under Article 118, the Commission has the task, in conformity with the general objectives of the Treaty and without prejudice to the other provisions, of promoting cooperation between Member States in the social field in particular in matters relating to employment, labour law and working conditions, basic and advanced vocational training, social security, prevention of occupational accidents and diseases, occupational hygiene, and the rights of association, and collective bargaining between employers and workers. To this end, the Commission has, under the same article, a duty to "act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations." Finally, under Article 122 the European Parliament "may invite the Commission to draw up reports on any particular problems concerning social conditions".

13. The Legal Affairs Committee considers that Article 100 and Article 117 together provide a legal basis for the harmonisation of social systems and that Article 235 provides a basis for harmonisation to attain Treaty objectives which are not specifically provided for elsewhere in the Treaty. These three articles provide a basis for a series of directives to harmonise Member States' provisions for 'disabled people whether laid down by law, regulations or administrative action.

14. Special problems arise in respect of the Social Fund. The terms of reference for the Social Fund laid down in Article 123 of the EEC Treaty are to improve employment opportunities in the common market and to contribute thereby to raising the standard of living. Under Article 126(b) of the EEC Treaty the Council may unanimously determine what new tasks may be entrusted to the Social Fund within the framework of its terms of reference laid down in Article 123. The task assigned to the Social

Fund under Article 123 is "rendering the employment of workers easier and of increasing their geographical and occupational mobility within the Community". Since two of the chief needs of disabled people in their search for greater integration into the community are greater employment opportunities and better mobility, this provision is clearly of great interest to them. It would also be helpful to them if the Guidelines of the Social Fund were redefined so that projects would be eligible which aim to provide a working environment for the handicapped but without the requirement that those involved in the projects be trained for full time employment.

15. There are divergences between Member States in the fiscal obligations applied to disabled people and the organisations referred to in paragraph 7b above. The Community already has, in particular in the field of indirect taxation, through the VAT Directives, the necessary legal instruments to harmonise the position of Member States. However, directives should now be adopted to minimise the tax burden in favour of the disabled.

16. After considering the legal aspects of possible Community initiatives in favour of disabled people and the legal means available for them, the committee considered that certain action should be given priority.

IV. SPECIFIC PROPOSALS

17. Having considered the motion for resolution of the Committee on Social Affairs and Employment the Legal Affairs Committee considers that the motion may be improved by the following amendments:

1. Motion for resolution: add a new paragraph 1a to read:

'Invites the Commission under Article 122 to draw up reports on the social and economic conditions of disabled people in each of the Member States and to make, on the basis of the reports, a community study of the common criteria and standards to be applied in Member States, this study to be made available to Parliament before the end of 1981.'

2. Motion for resolution: add a new paragraph 1b to read:

'Calls on the Commission to draft proposals, taking into account of the results of the Community study, and based on Articles 100, 117, and 235 of the EEC Treaty for a directive establishing common criteria and standards for rights and duties of disabled people in Member States.'

3. Motion for a resolution: reword paragraph 3 to read:

'Considers that disabled people should be fully integrated into the social security systems of Member States: and calls upon the Member

States to establish reciprocal arrangements for disabled people in such system.'

4. Motion for a resolution: reword paragraph 5(iii) to read:

'(iii) the Council and the Commission are asked to revise the Guidelines of the application of the Social Fund to take account of the problems of the disabled in designating projects as eligible for support: and to reconsider in particular the decision to fund all projects for disabled workers under Article 5 instead of Article 4 as recommended by the Commission, since the effect has been to inhibit innovative ideas and to exclude the majority of disabled citizens from any possibility of community aid.'

5. Motion for resolution: delete paragraph 9 and replace by:

'Urges the Commission, in addition to drawing up reports on the social and economic conditions of disabled people in each Member State, to,

- (i) ensure that the working party on technical aids produces a community wide and updated catalogue of aids for the disabled.
- (ii) consider carefully, in the light of the initial community programme in favour of the disabled, the organization of advanced courses for training personnel so that Member States can benefit from the exchange of ideas.'

6. Motion for resolution: add the following to paragraph 13:

'... and to take into account the particular needs of disabled people in its work on the creation of a European Health Card.'

7. Motion for resolution: paragraph 15:

delete all words after 'disabled children' and replace by: 'to alleviate in part the difficulties of those parents'

8. Motion for resolution: delete paragraph 16.

9. Motion for resolution: add new paragraph 18a to read:

'Calls upon the Commission to propose an amendment to the Sixth VAT directive to provide relief from VAT in all Member States for organizations supported by private donation whose purpose is to assist disabled people.'