

Tražitelji azila s invaliditetom u Europskoj Uniji

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UNIVERSITY OF ZAGREB

FACULTY OF LAW

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**ASYLUM SEEKERS WITH DISABILITIES IN THE
EUROPEAN UNION**

Master Thesis

Mentor: prof. dr. sc. Iris Goldner Lang

Zagreb, November 2023

Authenticity statement

I, *Ena Ranogajec*, declare that my master thesis named “Asylum Seekers with Disabilities in the European Union” is an original result of my own work and that no sources other than the ones cited in my thesis have been used in writing it.

Izjava o autorstvu rada

Ja, *Ena Ranogajec*, izjavljujem da je moj diplomski rad pod nazivom “Asylum Seekers with Disabilities in the European Union” izvorni rezultat mojega rada te da se u njegovoj izradi nisam koristila drugim izvorima do onih navedenih u radu.

Zagreb, 2023.

Ena Ranogajec

SAŽETAK

Osobe s invaliditetom su najveća manjinska skupina u svijetu, a ipak o toj skupini postoji najmanje svijesti. Ovaj će se rad pozabaviti slučajem tražitelja azila s invaliditetom u Europskoj Uniji, a posebno tijekom postupka za traženje azila. Istražit će pitanje invaliditeta s interdisciplinarnog stajališta, percepcije invaliditeta kroz povijest, definiciju invaliditeta, status invaliditeta u modernom dobu, kao i razvoj prava azila nakon Drugog svjetskog rata i prava osoba s invaliditetom. Na koncu, rad će analizirati nova postignuća u razvoju prava osoba s invaliditetom te na koji način ona utječu na status tražitelja azila s invaliditetom i osoba s invaliditetom u Europskoj Uniji, kako u teoriji, tako i kroz implementaciju u praksi.

Ključne riječi:

osobe s invaliditetom, azil, tražitelji azila, tražitelji azila s invaliditetom, europsko pravo azila, europsko pravo osoba s invaliditetom, UN Konvencija o pravima osoba s invaliditetom, Ženevska konvencija o statusu izbjeglica

SUMMARY

Persons with disabilities are the largest minority group in the world, yet one for which the least awareness exists. This paper will tackle the situation of asylum seekers with disabilities in the European Union, especially during the asylum procedure. It will examine the question of disability from an interdisciplinary viewpoint, its perceptions throughout history, and its definition and status in the modern day, as well as the development of post-World War II asylum law and laws and policies regarding disability.

In the end, the paper will analyze new achievements in the realm of disability rights, and how they affect the status of asylum seekers and persons with disabilities in the European Union in theory, as well as how well they are implemented in practice.

Keywords:

Persons with disabilities, asylum, asylum seekers, asylum seekers with disabilities, European asylum law, European disability law, UN CRPD, Geneva Convention on the Status of Refugees

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INTRODUCTION

In the past decade, the European Union (EU) has experienced a significant influx of asylum seekers from all over the world due to ongoing conflicts, political instability, and social unrest. Unfortunately, among these asylum seekers are individuals with disabilities, who are a smaller, invisible group. Women, children, unaccompanied minors, and elderly people with disabilities are particularly at risk of discrimination and exclusion from receiving appropriate support during the asylum process. The process itself is challenging for many people with disabilities due to inaccessible information, environments, and other related factors.¹ Although European legislation obliges member states to identify asylum seekers with disabilities, they are often only identified on an ad hoc basis or late in the procedure. Further, data available is not disaggregated by gender, disability, and age, which suggests that it is difficult to accurately assess the situation of asylum seekers with disabilities.²

The main hypothesis of this work is that the rights of asylum seekers with disabilities in the European Union, especially during the asylum procedure, are often breached and/or overlooked despite the existing EU and international legislation that guarantees them all human rights on an equal basis with others, and that current and future asylum legislation could implement more of human rights approach in regard to the asylum seekers with disabilities. This paper will address questions related to disability, such as its definition, the formation of views and definitions of disability, the impact of language on the status of persons with disabilities, and the number of people affected by disability. These questions will be considered in the context of how they have affected the status of asylum seekers with disabilities in the EU, and what the rights of asylum seekers with disabilities in the EU are, both as asylum seekers and persons with disabilities, as well as whether they are being fulfilled and protected during the asylum procedure.

In order to delve deeper into the matter, this paper will analyze existing literature on the topic of disability as a phenomenon and examine the status of disability within the European and international legal framework. Due to the lack of concrete and trustworthy information on disability and asylum seekers with disabilities, this paper will also analyze existing reports of non-governmental organizations that refer to the status of asylum seekers with disabilities in the EU.

The paper is divided into twelve parts, starting with the introduction. The second part of the paper will delve deeper into the history and development of disability and understanding thereof throughout human history, starting from antiquity

¹ European Disability Forum, 'Migration and Refugees with Disabilities,' EDF (European Disability Forum), <<https://www.edf-feph.org/migration-and-refugees-with-disabilities/>> (accessed October 2023)

² Naomi Mabita, 'The EU must protect the rights of refugees and migrants with disabilities,' (European Disability Forum, 11 August 2020), <<https://www.edf-feph.org/newsroom-news-eu-must-protect-rights-refugees-and-migrants-disabilities/>> (accessed October 2023).

and all the way to modern times. The third part of the paper will deal with the way disability was conceptualized through models of disability, while the fourth part will explain the ways language shapes our perceptions of disability.

In the fifth part of the dissertation, the population of persons with disabilities in the European Union today will be quantified, and in the sixth part, disability will be depicted within the context of international and European law and their development. Further, the seventh part of the paper will show a brief history of asylum law and its development in the European Union, and their current legal instruments and key principles defined in the following eighth part.

The paper will then go deeper into the issue of the position of asylum seekers with disabilities in the European Union and its legal framework in the ninth part, and some of the most pressing issues for asylum seekers with disabilities will be defined in the tenth part. The eleventh part will address the issue of discrimination and stigmatization of persons and asylum seekers with disabilities, while the twelfth part will cover the right to health for asylum seekers with disabilities.

2. Disability History

2.1 Disability as a Subject of Historic Research

The roots of Disability history can be traced back to the growing disability civil rights movement in the anglophone world of the 1980s, rather than as an academic discipline within history itself. The early works of disability history were created by people from diverse professional backgrounds such as journalists, activists, sociologists, lawyers, anthropologists, and historians. These individuals aimed to establish what some scholars refer to as a "usable past". Initially, authors produced both popular and academic works, thereby creating a "hidden history" that depicted the relationship between disability and various forms of discrimination, marginalization, and abuse. Many of these authors sought to explore disability outside of medical and rehabilitational professions whose main aim was to define and eradicate it, since the medical model of disability emerged in the 18th century.³ Disability history has since gained recognition as a special and accepted subdiscipline of history, particularly from the 1990s onwards, through various means such as conferences, special issues published by international journals, courses on academic curricula, research centers, and series of books published by academic publishing houses. One of the prominent characteristics of disability histories is its strong connection with the world outside of academia. While other scholarly fields sometimes struggle to reach society beyond academic circles, disability histories originated outside of academia and have worked their way into the world of scientific research and discussions. The work of disability historians aims to spark public debate and produce scholarly work that is useful for a broader audience.⁴

2.2 Ancient Greece and Rome

The narrative of King Oedipus is of great significance to ancient Greeks. It depicts the tale of a regal child with pierced ankles, abandoned to perish, in order to prevent his prophesied patricide.

The correlation between pierced ankles, bodily deformity, and the abandonment of a child, which numerous non-classicists have assumed, is not indicated in existing Greek literature. It is believed that some proponents of this theory have merely made the assumption due to its apparent simplicity. The notion that Spartans and Athenians discarded their "deformed" offspring is widely accepted in the scholarship of the 19th, 20th, and contemporary times, as well as popular culture. This presumption, however, is frequently espoused without adequate evidence. Some scholars suggest that the recommendations of philosophers like Plato and Aristotle to dispose of "deformed" children indicate that the opposite practice was prevalent in the societies of the Greek world. Throughout the course

³ Michael A. Rembis, Catherine Jean Kudlick, Kim E. Nielsen (eds), *The Oxford Handbook of Disability History* (Oxford University Press, 2018).

⁴ Public Disability History, 'Why We Need Another Blog' (2015) <<https://www.public-disabilityhistory.org/2015/09/why-we-need-another-blog.html#more>> (accessed February 2023).

of one's life, certain individuals, who were initially born without any disabilities, may gradually acquire them as a result of diverse factors including injuries or diseases such as arthritis. This phenomenon is not a modern-day occurrence and can be traced back to ancient Greece where the society believed that disabilities could be contracted via curses. The evidence for this is clear in inscriptions of curses and the concept of the evil eye, which suggested that those afflicted with this condition could cause harm to others simply by gazing at them. Injuries were frequently sustained in warfare, as exemplified in Homer's Iliad. In the ancient world, disability was often associated with advanced age, as depicted by the inhabitants of Diodorus's imagined island who lived without disability until age 50, after which they were required to commit suicide. Mobility was another crucial aspect of ancient human life, and while individuals with mobility impairments were able to navigate their surroundings with the assistance of crutches, there is no mention of wheelchairs in any form. Certain animals, such as donkeys, were used to aid in long distance travel.

Similarly, the Greek god Hephaestus, who suffered from a mobility impairment, sought the assistance of a donkey when returning to the Olymp from which he had been cast out. Nevertheless, archaeological evidence demonstrates that certain varieties of artificial limbs did indeed exist. An example of this can also be found in mythology, when Pelop's shoulder was bitten off by a stressed goddess and subsequently replaced with an ivory one. While some surviving correspondence indicates that family members had a socially conditioned duty to care for their elderly and/or disabled relatives, it is reasonable to assume that certain families mistreated, neglected, confined, or even killed their disabled family members.

Based on the remaining evidence, it can be safely assumed that disability was a normal aspect of human existence during antiquity. While modern scholars often highlight the economic burden of individuals with disabilities in the ancient world, there is no substantial evidence to suggest that children with disabilities were specifically exposed due to their potential economic burden on their families. Conversely, children without disabilities were also at risk of exposure due to economic scarcity. The existence of written and visual depictions of artisans with disabilities, who were highly regarded members of society, further support this notion. For example, the Greek god Hephaestus is frequently portrayed as a blacksmith using his tools, and Hippocratic writings suggest that Amazons dislocated their sons' joints in order to force them to work with leather and copper. Injuries and resulting impairments were common among metal workers and artisans, yet these impairments were not considered a valid reason to abandon one's work. Written evidence also reveals that disabled tailors and slaves were present, demonstrating that disability was not an uncommon aspect of ancient life.⁵

In ancient Rome, various explanations for impairment existed that may seem strange by today's standards. These ranged from numerological explanations

⁵ Martha L. Rose, *The Staff of Oedipus: Transforming Disability in Ancient Greece* (The University of Michigan Press, 2003).

connecting impairment to the unlucky number eight if the baby was born in the eighth month, to psychological experiences and visual stimuli that the mother experienced during gestation. Pregnant women were advised by some doctors to avoid looking at persons with impairments, and this practice persisted even into the 20th century. Some individuals even believed that by looking at monkeys, the mother risked giving birth to a child who resembled a monkey. Certain impairments were attributed to poor hygiene, poor quality milk, or inadequate first feeding, with blame being shifted to midwives or wet nurses who were already members of the lower classes of society.

In the ancient Roman world, a distinction was made between two types of birth: biological and social. Social birth occurred on the day of the official naming ceremony, which, for girls, took place eight days after biological birth, and for boys, nine days. Despite attempts to provide an explanation for this disparity, no satisfactory clarification was offered. This period between biological and social birth marked the time when a child was still an undefined entity, and if born with an impairment, their destiny was uncertain.

Children with impairments were often left to perish, as drastic measures such as strangulation or violent death were unnecessary. Instead, a child could be killed simply by being left alone without proper care. Usually, a silent pact was made between the mother and a midwife.

Regarding disability in Roman law, numerous expressions indicating varying mental and intellectual impairments were present. Contemporary scholars recognize that Roman jurists exhibited a certain level of humanity in their treatment of individuals with intellectual or mental disabilities, preserving their status as citizens with dignity and wealth, while also providing legal protection. Notably, persons with mental and intellectual disabilities were viewed as having the same legal status as children and minors. However, individuals with mental impairments were prohibited from drafting a will, entering into marriage, holding political office, and similar activities. The Twelve Tables contained provisions that instructed family members on how to manage the wealth of individuals with mental disabilities. Furthermore, individuals with such disabilities who posed a threat to their own safety or that of their relatives were not held responsible for their actions. For example, a person with a mental disability who murdered his mother while under the influence of illness was not legally responsible for the act, as mental illness was considered sufficient punishment. Instead, such individuals were closely monitored by family members or placed under house arrest. In the event that a person cannot be controlled by their relatives, it becomes the duty of the governor to incarcerate the individual with mental impairment. However, it remains unclear where and what form of incarceration should be used as institutions for mentally impaired persons did not exist during this time. Another aspect of mental illness is discernible from Roman texts, wherein individuals feigned mental illness to avoid high cost public offices and other similar situations. The challenge in such cases was that official procedures for diagnosing mental illness were non-existent, and the concept of a legal physician was yet to be established. Thus, it is unclear who made the decision for confinement and on what grounds, along with the responsibility and

supervision of mentally ill persons. In ancient Rome, the mental disability of a slave did not affect the slave's price, and the seller did not pledge to compensate the buyer for the slave's mental impairment. The opposite was true only if the slave's mental state was concealed during the sale. If the slave did not have any physical impairment and could perform intellectually simpler labor, then there were no concerns. Both Greek and Roman authors considered blindness to be a worse fate than death. Homer was perhaps the most significant "blind person" of the ancient world, but it is hard to determine whether the famous poet was genuinely blind solely from the etymological meaning of the name "Homer."

Among the disabilities experienced by ancient people, blindness was a prevalent one, alongside mobility impairments. The medical perspective on eye diseases and their treatment is documented in numerous remaining papyri. In mythology, blindness was often viewed as a punishment from the gods for sins or crimes committed. Although the blind utilized sticks to aid in their mobility, there is no mention of guide dogs in Roman sources.

In Roman law, individuals with visual impairments were not classified as "special cases" unlike other individuals with disabilities, and thus were not required to have legal guardianship in their affairs. They were permitted to compose a will, make an oral statement, and summon witnesses. However, the Justinian's regulation restricted these rights. Blind individuals were granted the ability to adopt and serve as tutors for minors and women, as well as guardians for persons with intellectual disabilities and males who attained legal majority but had not reached 25 years of age. Despite the fact that individuals with visual impairments were not uncommon in senatorial and other high-ranking positions in the Roman Empire, their economic and societal status had a significant impact on their quality of life.

Living with a hearing impairment in the Roman Empire presented a distinct reality for individuals with disabilities. Given the oral and debative nature of this culture, hearing loss and speech impairment often posed a significant challenge to accessing high society. In terms of legal rights, individuals with hearing and speech impairment were subject to narrower protections under Roman law than those who were blind. While cases of soldiers with hearing and speech impairment are documented, these were primarily instances of acquired impairment resulting from injury, accident, or psychological trauma. Although these soldiers were allowed to create wills, prior to experiencing impediments, they were not permitted to hold high offices or become judges.

In general, individuals who developed hearing or speech impairment as a result of accident or illness were unable to create a will unless they had done so beforehand. If a will existed, however, it would be considered valid. Persons with hearing and speech disabilities were often assigned guardians to manage their legal affairs. They were permitted to marry and informally free slaves, although formal manumission required spoken words. Hearing and speech loss of slaves did not impede their sale as physical labor was deemed unaffected. In cases of

their master's murder, deafmute slaves were not liable for failing to provide assistance.⁶

2.3 Disability in Medieval Europe

As the Roman Empire, which had lasted for centuries, came to an end in the 5th century, western Europe disintegrated under the onslaught of Barbarians. The once united continent fragmented into smaller communities, with life changing rapidly for all Europeans. For individuals with disabilities, this period was characterized by an increasing levels of neglect, indifference, and fear. As was often the case in ancient times, those with physical, mental, or intellectual disabilities were appointed as court jesters and labeled as "fools" solely for the amusement of the nobility. However, with the spread of Christianity, there emerged the concept that regarded every human being as a child of a good God, and this perspective significantly influenced the manner in which individuals with disabilities were treated. The Middle Ages saw the Roman Catholic Church take on the responsibility of caring for those in need, including the establishment of orphanages, hospitals, and homes for the elderly and blind. Following the Crusades from 1100-1300, leprosy began disappearing, leading to the conversion of the remaining colonies for the care of such patients, referred to as leprosariums, for other purposes. These establishments subsequently became homes for individuals viewed as "deviant," including those with disabilities. They were known as "cities of the damned" and had their own powers of administration, jurisdiction, police, and punishment. During this era in history, the Roman Catholic Church authorities established asylums for the elderly, blind, and those who lacked the means to sustain themselves. These institutions were the sole establishments of their kind. Additionally, during this time, "idiot cages" were erected in town centers as a means of restraining individuals with disabilities. It is widely believed that these inventions were utilized as a form of entertainment for the townspeople. In certain European nations, sailors who journeyed to foreign lands were incentivized to transport individuals with disabilities to alleviate the burden they imposed on community. These persons were deemed unproductive members of society. This practice resulted in the creation of "ships of fools," vessels that voyaged from port to port, charging admission to view their "human cargo." Ultimately, these ships would abandon their passengers in foreign ports, leaving them to fend for themselves or perish. The establishment of the shrine of Gheel in Belgium in 1215, which was dedicated to St. Dymphna, the patron saint of mental illness, is considered the origin of family and foster care. Despite the fact that individuals with disabilities were regarded as "children of God," the impetus for segregation was primarily driven by economic scarcity. During the medieval times, individuals with disabilities constituted one of the most destitute segments of society, with limited recourse other than to resort to begging in order to survive.⁷

⁶ Christian Laes, *Disabilities and the Disabled in the Roman World: A Social and Cultural History* (Cambridge University Press, 2018).

⁷ Minnesota.gov, 'Parallels In Time/ Part One/ The Middle Ages, Renaissance, and Reformation 476 AD - 1500 A.D.' <<https://mn.gov/mnddc/parallels/two/1.html>> (accessed February 2023).

Inappropriate expressions describing persons with disabilities such as 'the lepre', 'the blynde', 'the dumbe', 'the deaff', 'the natural fool', 'the creple', 'the lame', and 'the lunatick' were commonly utilized. The origins of disability were not always clear during the Middle Ages, with some individuals believing it to be a punishment from God for the sins committed by either the person with a disability or their family member. Others considered it to be the result of being born under the hostile influence of Saturn. Most people with disabilities at the time resided in their communities, receiving support from either their families or local communities. The government did not participate in their care. If families or local communities were not able to care for their disabled citizens, they often resorted to begging. Monks and nuns frequently cared for individuals with disabilities as part of their religious duty. They provided food and shelter for them, religious care, counsel and visitation for imprisoned persons, and burial. During this time, hospitals began to emerge in close proximity to convents, with special hospitals for leprosy, blindness, and physical disabilities being established. Alms houses were also established to provide support for the disabled and elderly. It is worth mentioning that these hospitals and alms houses did not provide the level of service that is offered today. However, they laid the foundations for what would eventually become the modern system of public services for persons with disabilities over the next 500 years.⁸

2.4 Disability and Industrial Revolution

The Industrial Revolution holds a significant place in the area of disability studies and has had a profound impact on the contemporary perception of disability. One of the foremost scholars on disability, Vic Finkelstein, claims that disability is a creation of industrial capitalism. The economic changes brought about by the Industrial Revolution altered the status of individuals with disabilities, as they encountered increasing difficulty in selling their labor on the same terms as other workers, leading to their heightened stigmatization and isolation. Finkelstein, along with other disability scholars who espouse this theory, claim that while people with disabilities faced stigmatization and poverty prior to industrialization, the organization of society at that time enabled them to participate to the fullest extent of their abilities in community life.

During the preindustrial era, which was largely agrarian in nature, the primary focus of production was on households and individuals who performed various tasks. This resulted in a greater degree of autonomy for individuals in determining their work processes, routines, and rhythms, as well as the structure of their workdays. Despite the challenges faced by persons with disabilities, the flexible nature of preindustrial work and life meant that they could still occupy productive and socially valued roles.

As industrialization gained momentum, individuals with disabilities were compelled to accept positions that were deemed less socially acceptable. Scholars of this theory highlight four critical disabling elements prevalent in industrial

⁸ Medieval Histories, 'Nature History Heritage' (20/01/2015) < <https://www.medieval.eu/disability-middle-ages/> > (accessed March 2023).

societies, namely the acceleration of production linked with mechanized factory work, the imposition of stricter discipline on the workforce, the enforcement of strict timekeeping, and the standardization and regulation of production norms. The accumulation of these factors is believed to have resulted in unfavourable working conditions for workers with impairments. Even if they were not entirely excluded from the workforce, people with disabilities were assigned to marginal production roles that were often inadequately compensated.

The consequence of this was the stigmatization and categorization of individuals with impairments as persons who were deemed incapable of contributing to society, thus rendering them unproductive members. As a result, individuals with disabilities were isolated and confined to specialized institutions, as they were perceived as a burden on society, requiring institutionalized care rather than community-based support.

For the contemporaries of the industrial revolution, the impact on the bodies of workers was of greater concern than the effects it had on persons with disabilities. Opponents of mechanization and the employment of children in textile mills highlighted the damaging impact such work had on the health of these laborers. As time progressed, a growing number of industry workers experienced some form of impairment as a result of inadequate working conditions. Even eugenicists at the end of the 19th century began to observe that industrial cities would give rise to an inferior race of urban "degenerates."⁹

In the 19th century, individuals with disabilities, despite being unable to pursue conventional occupations, leveraged their unique characteristics to engage in performances as entertainers and mascots, commonly known at the time as "freak shows". These displays experienced a peak in popularity during 19th century, with both royals and commoners seeking to witness the spectacle.¹⁰

2.5 Disability and Rise of Eugenics

The term "eugenics" was coined by Francis Galton, the cousin of Charles Darwin, who derived the term from the Greek word "eugene," meaning "good in birth." In his 1883 book "Inquiries into Human Fertility and Its Development," Galton contended that social characteristics, including intelligence, are products of heredity. He expressed prejudiced notions regarding race, class, and gender, ultimately concluding that only "higher races" could achieve success.¹¹ Eugenics, a pseudoscientific theory purporting the possibility of genetic and hereditary-based "improvement" of humans, was founded on a misinterpretation of the

⁹ David M. Turner and Daniel Blackie, *Disability in the Industrial Revolution: Physical Impairment in British Coalmining, 1780–1880* (Manchester University Press, 2018) <<https://www.manchesteropenhive.com/view/9781526137733/9781526137733.xml>> (accessed March 2023).

¹⁰ Lennard J. Davis (ed), 'The Disability Studies Reader' (5th edn, Routledge) <<https://www.routledge.com/The-Disability-Studies-Reader-5th-Edition/Lennard-Davis/p/book/9780367332585>> (accessed March 2023).

¹¹ National Human Genome Research Institute, 'Eugenics: Its Origin and Development,' (1883 - Present) <<https://www.genome.gov/about-genomics/educational-resources/timelines/eugenics>> (accessed March 2023).

theories of renowned scientists Charles Darwin and Gregor Mendel. Pioneers of eugenics utilized these theories to bolster their claims of attaining racial perfection. The followers of eugenics, identifying several groups like ethnic and religious minorities, persons with disabilities, members of the LGBTQ community, and urban poor people as "unfit," sought to create an ideal society by eliminating unfits." Eugenics emerged in 19th century England, rapidly spreading throughout the world and becoming a widely accepted ideology in many industrialized countries by the end of World War I. The concept of eugenics gave rise to two predominant schools of thought, namely positive eugenics, which advocated for the propagation of the "superior" members of society, and negative eugenics, which actively discouraged and even prohibited the "inferior" members of society from reproducing. It is unfortunate that the majority of Western nations implemented laws mandating the sterilization of individuals deemed "unfit" for procreation. Most notably countries, such as Canada (specifically the province of Alberta), several American states, Germany, Switzerland, Sweden, Norway, Denmark, Finland, and Japan, all enacted sterilization laws. Among these nations, Germany exhibited the most unwavering commitment to eugenic policies.¹²

2.6 Eugenics and Persons with Disabilities during the World War II

A significant portion of the policies of the Nazi regime were based on the principles of eugenics. These theories were widely accepted within the international scientific community during the early decades of the 20th century. The German iteration of the term "eugenics", known as "racial hygiene", was initially coined by the German economist Alfred Ploetz in 1895. The fundamental concept of this movement was the belief that human heredity was fixed and unalterable. Eugenicists asserted that social problems such as mental illness, alcoholism, criminality, and even poverty, had their origins in genes. Eugenics proliferated throughout the industrialized world, but it was most radically implemented in Nazi Germany. This movement emerged in the 1910s and 1920s, and prior to World War I, the German eugenics movement did not deviate significantly from its counterparts in other countries. However, after the war, the movement became increasingly radical. Due to the economic setbacks endured by Germany between the two world wars the division between "productive" and "unproductive" members of society grew more pronounced. The prevalent belief during the Weimar Republic and thereafter, during the Third Reich, was that worthy and productive Germans sacrificed their lives on the battlefield, while the unproductive were institutionalized in prisons, hospitals, and welfare facilities. This notion was utilized to justify the imposition of eugenic measures. Moreover, racial hygiene played a significant role in shaping Nazi policies in numerous other ways.¹³

In his written work "Mein Kampf", which was dictated to Rudolf Hess while he was imprisoned, Adolf Hitler espoused the belief that individuals who were

¹² Tom Shakespeare, *Disability Studies* (Sage Publications, 2013).

¹³United States Holocaust Memorial Museum, 'Eugenics,' (last edited Oct 23, 2020), available at <<https://encyclopedia.ushmm.org/content/en/article/eugenics>> (accessed March 2023).

deemed defective ought to be prevented from producing similarly defective offspring. He further posits that the act of preventing such individuals from procreating would be the most humane course of action. According to Hitler, the elimination of such "defectives" would result in a reduction of suffering for millions of "unfortunates" and would raise the health standards for the remainder of the population. Hitler expressed his desire for only healthy individuals to bear children, and those who exhibited visible signs of illness or inherited ailments must be prevented from doing so. To many of his comrades, Hitler proclaimed that advances in fields such as eugenics, as well as his extensive studies on the topic of hereditary laws, could prevent the birth and reproduction of unhealthy and severely handicapped individuals. In the early part of 1933, subsequent to tumultuous elections in November of 1932, Hitler assumed power. Promptly upon seizing power, the Nazis promulgated legislation that excluded Jews from professional and social life, and implemented violent measures against their political adversaries. Additionally, the Dachau concentration camp was inaugurated on the 20th of March 1933, and an unprecedented wave of refugees from Germany dispersed throughout the world. On the 14th of July 1933, the Law for the Prevention of Defective Progeny was ratified. This mandatory law required the mass sterilization of "unfit" individuals. At the top of the list of those to be eliminated were individuals identified as feebleminded, followed by those with diagnoses of schizophrenia, manic depression, Huntington's chorea, epilepsy, hereditary body deformities, deafness, and hereditary blindness. To avoid confusion with ordinary drunkenness, alcoholism was listed as a separate category and was optional. A mass campaign of sterilization was initiated on January 1st, 1934, and a comprehensive system was established to facilitate the application of eugenic measures. Both eugenic and hereditary courts were created, with 205 local courts presided over by physicians, eugenicists, and panel chairmen. For contested cases, there were at least 26 appellate courts. Any individual could be reported for investigation, and doctors were obligated to report their suspected patients or face a fine. During the course of the hearings, it was mandated that medical practitioners provide confidential patient data, a practice that would ordinarily be deemed unlawful and unethical. In 1934, a sterilization procedure referred to as "Hitlerschnitte" or "Hitler's cut" was implemented, which sterilized approximately 56,000 individuals, representing approximately 1 in 2000 Germans. This procedure was applicable to individuals between the ages of 10 and 50. Unfortunately, numerous eugenic organizations worldwide applauded Germany's meticulous and effective sterilization efforts. By 1937, around 200,000 Germans from various backgrounds had been sterilized, and thereafter, no further records were disclosed. Gradually, the notion of individuals deemed unworthy of life, otherwise known as "useless" or "worthless eaters," gained popularity. Following Germany's invasion of Poland in 1938, medical equipment and hospital beds were deemed essential. Consequently, German eugenicists transitioned from sterilizing the unfit to full-blown euthanasia. In accordance with the issued guidelines, organized euthanasia was initiated, wherein a patient could be subjected to a medical procedure without prior knowledge. In the year 1939, a vast number of individuals hailing from old age homes, mental institutions, and other custodial facilities were systematically

subjected to gassing. The outcome of this heinous act was the demise of approximately 50,000 to 100,000 individuals, while the selection of victims was carried out by psychiatrists who were rooted in eugenics.¹⁴

3. Models of Disability

3.1 Introduction to Models of Disability

Models of disability serve as tools utilized to define disability and are employed by society and government to develop strategies that meet the needs of individuals with disabilities. Although they are often deemed inadequate in reflecting the true status of disability in the real world due to their narrow perspective and lack of detailed guidance for further action, they remain useful frameworks for gaining insight into disability-related issues. Those who create and apply these models can benefit from them greatly. Notably, models of disability are typically established by individuals without disabilities, offering an opportunity to gain insights into people's attitudes, prejudices, and their impact on persons with disabilities. Models of disability serve as a comprehensive overview of the societal and governmental provisions and limitations of access to work, goods, services, economic influence, and political power for individuals with disabilities. These models are influenced by two fundamental philosophies: one that conceptualizes individuals with disabilities as dependent on society, and another that views them as consumers of society's services. The former philosophy typically results in segregation and discrimination, while the latter promotes empowerment, integration, and equalization of human rights.¹⁵ Hence, models of disability are indicative of societal perceptions throughout history regarding disability and how these models have influenced the creation and implementation of legislation and policies on disability.¹⁶

3.2 Moral or Religious Model of Disability

The moral or religious model stands as the most ancient model of disability and is the predominant model of disability in the majority of religions. The moral model perceives disability and its origins in various ways. Firstly, it depicts disability as a punishment from gods for sins committed against religious or social norms by the individual with disability or by its predecessors. This perspective often results in the stigmatization and exclusion of the individual with disability and their family members from social life and the community. Secondly, disability is viewed as a salvific test of one's faith. A problem with this perception is that healing is expected, and if it does not occur, it is considered to be the result of a lack of faith. This, in turn, leads to additional stigmatization. Another perception of disability

¹⁴ Edwin Black, *War Against the Weak* (Four Walls Eight Windows, 2003).

¹⁵ DO-IT, University of Washington, *What are different models of disability?*, <<https://www.washington.edu/doiit/what-are-different-models-disability>> (accessed March 2023).

¹⁶ Alaska Mental Health Consumer Web, *Models of Disability: Keys to Perspectives, Applications and Interpretations*, <https://www.theweb.ngo/history/ncarticles/models_of_disability.htm> (accessed April 2023).

presented by the moral model is one where disability is given to a person to develop certain virtues such as patience, perseverance, and courage while living with disability. This view of disability encourages the opinion that persons with disabilities are "blessed ones" as they have the chance to improve themselves and their character. The mystical perception of the moral model of disability speaks of disability, mostly disability of senses, as a chance for other senses to become heightened and to be able to perceive the seen and unseen world. This view of disability sees persons with sensory impairments as persons with "special abilities," and persons with disabilities are portrayed as "chosen ones" with a special mission given by gods.¹⁷

3.3 Medical Model of Disability

The predominant model of health in Western civilizations is the biomedical model of health, which focuses solely on biological factors. A part of this model of health is the medical model of disability which began to develop in the mid-19th century, replacing the dominant moral model of disability at that time.¹⁸ The rapid development of medicine during this period resulted in disability being viewed as a problem that could be fixed. The medical model perceives disability as a failure of the body, abnormality, and a deviation from the "normal" standard. The solutions for disability according to this model are the cure of impairment, its amelioration to the extent possible, and rehabilitation and adjustments to everyday life as much as possible. The role of the person with a disability is to spend a significant amount of time and effort working with professionals trained to work with people with their specific impairment.

This model of disability holds purely negative opinions on disability, concluding that disability should either be prevented or cured; otherwise, there can be no happiness. This way of thinking led to some of the most gruesome "medical" procedures performed on persons with disabilities, such as involuntary sterilization and euthanasia. Consequently, the medical model is also known as the "personal tragedy model," and expressions such as "invalid," "spastic," "handicapped," and "retarded" are derived from it. Medical professionals adhering to this model of disability often depict persons with disabilities as inadequate and embarrassing, requiring them to play the so-called "sick role." By playing this role, persons with disabilities are expected to withdraw from social life and social obligations they once had. In one way, they are exempted from their own state and deprived of the claim of full legitimacy.

The shortcomings of this model are many, from the fact that persons with disabilities need to play the "sick role" to receive any help to the fact that it does not distinguish the term "sick" from the term "impaired." Many persons with

¹⁷Retief, M. & Letšosa, R., 2018, 'Models of disability: A brief overview', HTS Teologiese Studies/Theological Studies 74(1), a4738, <<https://hts.org.za/index.php/hts/article/view/4738/10993>> (accessed January 2023).

¹⁸ Disabled World, 'Models of Disability: Types and Definitions' (Published: 2010-09-10, Updated: 2023-09-20) <<https://www.disabled-world.com/definitions/disability-models.php>> (accessed February 2023).

disabilities are not sick, but they have ongoing impairments that do not result in daily health problems.¹⁹

3.4 Social Model of Disability

In the latter half of the 20th century, a significant number of individuals with disabilities, spurred by the civil rights movement, began to question their place in society and in life. These individuals began to challenge prevailing notions and biases surrounding disability, ushering in the dawn of the disability rights movement, which first emerged in the United Kingdom before spreading to other European countries. People with disabilities began to band together, forming organizations that were led and managed by them. They began to advocate for the deinstitutionalization of care services, as they were primarily being housed in institutional settings, and desired to live like any other citizen with the ability to choose how and where they reside.

The concept of disability was successfully reconceptualized as a matter of civil rights and equality, rather than solely a medical or charitable issue. This led to groups and organizations of individuals with disabilities advocating for greater control over their lives and advocating for changes to be implemented in order to achieve this aim. This approach to disability is known as the social model of disability, and has undergone significant extension and refinement over the past four decades. The social model of disability presents a markedly different perspective on disability compared to previous models, including the medical model. Rather than viewing impairment as the root cause of oppression, exclusion, and discrimination, the social model of disability posits that these societal ills are the result of how society is structured.

From the perspective of a social model, the concepts of impairment and disability are distinct. Impairment encompasses physical, cognitive, or sensory differences in an individual, while disability is a social outcome of one's impairment that is brought about by society and its physical, environmental, or attitudinal obstacles.

The social model perceives disability as a social construct which makes disability a changeable phenomenon. Furthermore, disability language, as posited by the social model, reflects cultural assumptions and biases regarding disability. Throughout human history, such language has often conveyed a negative perspective, either medical or charitable. The social model of disability, on the other hand, critiques such medical or negative language and replaces it with language that more accurately depicts the experience of disability.

The social model of disability favors the term "disabled person" over "person with disability" due to the latter's connotation of exclusion experienced by individuals with impairments from society. The term "disabled person" serves as a political expression reflecting shared and disabling experiences among persons with impairments. Furthermore, the social model of disability posits that phrases

¹⁹Retief, M. & Letšosa, R., 2018, 'Models of disability: A brief overview', HTS Teologiese Studies/Theological Studies 74(1), a4738, <https://hts.org.za/index.php/hts/article/view/4738/10993> (accessed January 2023).

like "person with disability" suggest that impairment and disability are synonymous, and thus, an individual's own issue rather than a collision of social barriers that lead to the disabling of individuals with impairments.²⁰

3.5 Human Rights Model of Disability

Although the social model has been deemed a revolutionary approach in the transformation of the status of individuals with disabilities in recent decades, it has also been subject to valid criticisms. In response to the limitations of the social model, the creators of the CRPD have proposed the human rights model of disability as an advancement of the aforementioned social model, and as a mechanism for the effective implementation of the CRPD. During the deliberations of the Convention on the Rights of Persons with Disabilities (CRPD), despite the absence of unanimity among stakeholders concerning the course to pursue in formulating the text of the CRPD, a common understanding was shared: the medical approach to disability should not serve as the foundation for the new human rights treaty pertaining to the rights of individuals with disabilities.

Initially, the social model was deemed to serve as the fundamental basis for the novel convention. Nevertheless, despite the fact that the social model of disability constituted the cornerstone of the UN CRPD, it is contended that the CRPD transcends the standardized conception of the social model of disability and enshrines the human rights model of disability. The social model of disability describes disability as a societal construct that arises from societal exclusion, oppression, and discrimination of persons with disabilities, and places greater emphasis on societal causes of disablement rather than on the individual.

The Convention on the Rights of Persons with Disabilities (UN CRPD) utilizes the human rights model as a means to achieve its objective of promoting, safeguarding, and ensuring the full and equal enjoyment of all human rights and fundamental freedoms by individuals with disabilities, while also fostering respect for their inherent human dignity. Moreover, the social model of disability advocates for reforms aimed at preventing discrimination, while the human rights model of disability is more comprehensive, encompassing both civil and political rights, as well as social, cultural, and economic rights. Furthermore, viewed through the lens of the human rights model of disability, impairment - characterized by a decline in human health and a reduction in quality of life for individuals with disabilities - cannot be simply disregarded or examined solely from a social perspective. It is paramount that such impairment be taken into account during the development of social justice theories. Initially, the social model was proposed to function as the fundamental model for the innovative convention. Nevertheless, while it remains true that the social model of disability constitutes the foundation of the CRPD, it is argued that the CRPD transcends

²⁰ Nick Wastson, Alan Roulstone, and Carol Thomas (eds.), *Routledge Handbook of Disability Studies*, 2nd ed., Routledge, 2020.

the common conception of the social model of disability and incorporates the human rights model.

The entire objective of the human rights model was not to forsake the social model of disability, which has brought numerous benefits to the comprehension of disability, but rather to enhance it and provide it with a new dimension. Whilst the social model provides an explanation of disability, the human rights model furnishes policymakers with a blueprint for discovering solutions.

Notwithstanding the fact that CRPD has many party members, the incorporation of the human rights model of disability must still be reflected in the execution of disability policies.²¹

4. Language of Disability

Disability remains a topic cloaked in taboo even to this day. The majority of individuals view persons with disabilities as being highly sensitive and offensive, therefore, shying away from discussing or engaging in dialogue about disability, fearing the possibility of making an inappropriate remark.

However, the reality is vastly different. Disability can and should be discussed, as long as it is done so in a courteous and respectful manner. The question that remains unanswered is what precisely constitutes a "polite manner" when discussing disability.

In the realm of disability language literature, we can identify two distinctive perspectives on this issue. One standpoint perceives disability language as a reflection of one's perception of disability, while the other regards disability language as a manifestation of a rigid political correctness that conceals genuine problems encountered by those living with a disability, and prevents any further discussion on this topic.

A careful look at the history of human civilization reveals how the treatment of disability has evolved over time and how disability language has changed, reflecting shifting attitudes and perceptions of disability.

For the past few centuries, there has been an application of both the medical and social models of disability, with the two being used interchangeably. The medical model perceives disability solely as a medical condition that necessitates alleviation. Failure to do so results in the segregation of individuals with disabilities from the rest of society. Conversely, the social model perceives disability as a combination of various factors, including social and environmental ones, that contribute to the disablement of individuals.

The civil movement of individuals with disabilities in the latter half of the 20th century posited that individuals with disabilities are more than their disability. While undoubtedly a significant characteristic, disability does not singularly define an individual, nor does it detract from their fundamental, innate humanity. From the shift in perspective among individuals with disabilities, and gradually among those without disabilities too, emerges the so-called "person-first" and

²¹ Theresia Degener, "A Human Rights Model of Disability" in Michael Ashley Stein and Janet E. Lord (eds), *Routledge Handbook of Disability Law and Human Rights* (Routledge 2016) 33-47.

"disability-first" language. The former accentuates the personhood of individuals with disabilities, while the latter highlights that individuals with disabilities are not disabled by their medical condition, but rather by the barriers they encounter that disable them, hence the term "disabled persons".

An additional group of authors and disability activists view the language of disability as a rigid means to enforce politically correct language, which hinders the discussion of disability and diverts attention from the genuine problems associated with living with disabilities. They reckon that by utilizing appropriate language, discrimination can be eradicated. A typical expression of this viewpoint is the occurrence of ableism.²²

Ableism is a misguided and biased understanding of disability that assumes the lives of persons with disabilities and life with disability are not worth living. One expression of ableism is language, which is closely related to the language of the medical model of disability. It is unacceptable to call a person with a disability "a patient" except when referring to them in a medical sense. Expressions such as "afflicted with," "suffering from," or "stricken with" are also inappropriate as they imply ongoing and never-ending pain due to acquired disability. Another common misconception of disability is one where life with disability is portrayed as an act of courage, bravery, or almost a heroic undertaking. Unlike many other human traits, disability can be acquired at any age or period of life by any person of any sex, race, social or economic status, etc. Many argue that disability is a part of human life and, as such, part of human diversity. It should not be looked upon as something uncommon or extraordinary. As the population of the Western world ages, it is considered that the number of persons with disabilities will grow as well.²³

The issue of whether disability should be considered "inspirational" was raised subsequent to the widespread circulation of the TED talk delivered by Stella Young, a journalist, author, comedian, and disability rights activist, on the internet in 2014. In her talk, entitled "I Am Not Your Inspiration, Thank You Very Much," Young encouraged her audience to contemplate the notion of whether the performance of everyday tasks by individuals with disabilities is and should be considered inspirational.²⁴ Another common trend in the use of disability language involves the intentional employment of softened expressions aimed at countering derogatory language that has been used in the past, and at times, still continues to be used in reference to disability.

²²Tom Shakespeare, *Disability Studies* (Sage Publications, 2013).

²³United Nations Office at Geneva, *Disability-Inclusive Language Guidelines* (United Nations Office at Geneva, January 2021) <<https://www.ungeneva.org/sites/default/files/2021-01/Disability-Inclusive-Language-Guidelines.pdf>> (accessed December 2022).

²⁴TEDxSydney, 'I'm not your inspiration, thank you very much,' April 2014, <https://www.ted.com/talks/stella_young_i_m_not_your_inspiration_thank_you_very_much> accessed December 2022.

Expressions such as "differently abled", although seemingly politically correct, may present a barrier to meaningful discourse on disability issues. That is because such terms imply that everyone possesses unique abilities and limitations, thereby preventing an honest examination of the diverse challenges faced by individuals with disabilities.

The use of disability language remains a somewhat ambiguous and contested topic within the disability studies field. While it does serve to reflect personal and societal attitudes towards disability, it is not an infallible tool for fully resolving the complex issues and inequalities experienced by persons with disabilities in society.²⁵

5. Definition of Disability in the European Union

Definitions of disability within the European Union exhibit variances from state to state in accordance with their respective historical, cultural, political, social, and economic contexts. Consequently, certain nations espouse a social approach to disability, while others endorse a partially social approach or a medical approach to disability.

While there exist variations amongst member states in their approaches towards disability, there are also distinctions in how they codify disability. Certain nations have formulated a legal framework that functions as a benchmark for all disability policies, whereas other member states lack such a framework for defining disability. In certain nations, the notion of disability is deliberately left undefined in order to prevent the stigmatization that may arise from a rigid definition. This is exemplified by the Scandinavian countries. Additionally, definitions of disability may differ even within a single country, contingent upon various objectives such as social or professional inclusion, special education, compensatory aid, support for those in need, and so forth.²⁶

At the EU level, a policy shift concerning the status of persons with disabilities was implemented with the adoption of the Treaty of Amsterdam in 1997, which officially came into force in 1999. This treaty laid the foundation for the prohibition of discrimination based on disability through the inclusion of article 13. It is noteworthy that within the same year, the Community had already adopted two directives that were founded upon article 13. These directives include the Race Equality Directive, which aimed to prevent discrimination based on race and ethnic origin in various fields such as employment, vocational training, education, social protection, and access to goods and services, and the second directive, referred to as the Framework Directive or the Employment Equality Directive, holds significance in its own right. It is worth noting, however, that similar to article 13 of the Treaty of Amsterdam, this

²⁵United Nations Office at Geneva, Disability-Inclusive Language Guidelines (United Nations Office at Geneva, January 2021) <<https://www.ungeneva.org/sites/default/files/2021-01/Disability-Inclusive-Language-Guidelines.pdf>> (accessed December 2022).

²⁶H Bolderson, D Mabbett and B Hvinden, Definitions of disability in Europe: A comparative analysis: Final report, (Brunel University, 2002) available at <<https://pure.uvt.nl/ws/portalfiles/portal/1087210/definitions.PDF>> (accessed December 2022).

directive remains ambiguous in its definition of disability. In the case of *Sonia Chacón Navas versus Eurest Colectividades S.A.*, it was established that the plaintiff had been an employee of the catering company. While on sick leave awaiting surgery, she received a notice of termination of her employment contract, which was to come into effect the following Monday. The employer did not provide Mrs. Navas with any explanation for the termination of her contract, but did offer her financial compensation for the unlawful dismissal. It should be noted that, under Spanish law, there are three types of dismissals: lawful, unlawful, and void. Lawful dismissals are those that are executed in accordance with statutory regulations, while unlawful dismissals are those that fail to comply with such regulations. Void dismissals, on the other hand, are those that violate an individual's fundamental rights and freedoms, such as the right to be free from discrimination.

An employee who has been unlawfully dismissed is entitled to receive financial compensation, whereas an employee who has been voidly dismissed has the right to be reinstated to their previous employment. Navas sought a declaratory judgment, claiming that her dismissal was void due to her illness and that it was a result of discrimination based on her disability.

The labor court in Madrid has determined that illness, though a valid reason for dismissal, is not sufficient grounds for it to be considered void. This decision is in accordance with Spanish statute, which prohibits discrimination on the basis of disability, gender, age, and race, but not illness. It is also consistent with Spanish precedent, which distinguishes between illness and disability as grounds for dismissal. Finally, the Madrid court found that the employer's decision to compensate and dismiss Navas was a more cost-effective option than hiring temporary employees until she was able to return to work.

If the plaintiff's case were to reach its final stage in the national court, her recourse would only be to receive financial compensation and subsequently be discharged. Nonetheless, the national court was obligated to make a preliminary reference to the European Court of Justice (ECJ) inquiring whether illness is a forbidden basis for discrimination under the Framework Directive, either independently or implicitly as a form of disability.

The European Court of Justice (ECJ) initially observed that illness or sickness, as the court has stated, is not expressly indicated as a forbidden ground in either the Framework directive or Article 13 of the Treaty of Amsterdam, which serves as its legal foundation. Furthermore, the second query investigated whether implicit discrimination based on illness is prohibited by primary or secondary law of the EC as a component of disability discrimination.

According to the ECJ, the determination of disability is reliant upon the definition prescribed in primary and secondary community law, particularly in the scope of employment and occupation. Nevertheless, the Framework directive and Treaty of Amsterdam do not provide a definition for disability. The ECJ recognized an existing gap in the law that required resolution. Consequently, it proceeded to establish disability as: "a limitation which results in particular from

physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life.”.

The definition in question sparked controversy among scholars, disability activists, and organizations representing individuals with disabilities. Notably, it bears a striking resemblance to the medical definition of disability that the EU rejected in 1996 during the Treaty of Amsterdam and art. 13 negotiations. The political origins of the Framework directive reveal a social model of disability, which conceptualizes disability as a result of societal discrimination, rather than an individual's medical condition. Consequently, the court determined that it is not the work environment that impedes professional life, but rather medical conditions. Additionally, the judgment is alarming in that it fails to differentiate between various forms of medical impairments. Ultimately, the court's opinion appears to reflect a lack of awareness regarding the historical, political, and normative debates on the definition of disability in Europe and around the world.²⁷

In the case of *Coleman v Attridge Law* (2008), case C-303/06, the plaintiff, who is a mother of a child with a disability and also her son's caretaker, was denied the flexibility in work that was given to other employees while working as a legal secretary. Ms. Coleman claimed that she was subjected to discrimination on the basis of her son's disability.²⁸ The ECJ ruled in her favor by asserting that the directive cannot be narrowly interpreted to include only persons with disabilities themselves, as this would diminish the level of protection that the directive is intended to provide. The purpose of the directive is to combat all forms of discrimination, and thus, it is not restricted to any particular category of persons but pertains to the essence of discrimination.

The prohibition of discrimination based on disability extends beyond individuals with disabilities to encompass unfavorable treatment of associated persons, including mothers who serve as both caregivers for their children and employees.²⁹ In this instance, the focus was on the discriminatory act rather than the individual's condition, signifying a positive step towards implementing a social model of disability in the European Union.

²⁷Vlad Perju, Impairment, Discrimination, and the Legal Construction of Disability in the European Union and the United States,, Cornell International Law Journal, 44, no. 2 (2011), 277-348, <<https://ww3.lawschool.cornell.edu/research/ILJ/upload/Perju-final.pdf>> (accessed June 2023).

d Perjur, Impairment, Discrimination, and the Legal Construction of Disability in the European Union and the United States, Cornell International Law Journal, 44, no. 2 (2011), 277-348. Available at: <<https://ww3.lawschool.cornell.edu/research/ILJ/upload/Perju-final.pdf>> (accessed June 2023).

²⁸Case C-303/06 | *S. Coleman v Attridge Law and another* | [2008] | ECR I-6499.

²⁹European Commission, „Discrimination on the grounds of Disability: The relationship between EU law and the UNCRPD: The concepts of “Disability” and “Reasonable Accommodation Funded under the Rights, Equality and Citizenship Programme 2014-2020 of the European Commission,‘ (2021) Available at: <https://ec.europa.eu/info/sites/default/files/justice_disability_report_2021_en.pdf> (accessed June 2023).

On the 22nd of January 2011, the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) was enacted in the EU, with all its member states having signed and ratified the convention.³⁰ In light of the absence of a distinct definition of disability on the EU level, the European Commission commissioned a study from Brunel University in 2014 to draft one. The results of this study accentuated several issues regarding the formulation of a unique definition of disability. The implementation of a single definition of disability would result in the misdirection of current state-level policies. On the contrary, the plurality of disability definitions leads to a lack of coherence in disability policies. While this study did not establish a single definition of disability at the EU level, the definition provided by the UN CRPD has been regarded as a common point since the convention's ratification. Subsequent to the EU's ratification of the UN CRPD, it also accepted its definition of disability based on the principles of human rights and non-discrimination. The EU is neither capable of nor obligated to enforce any particular definition of disability on its member states, but it may demand that the definitions formulated by member states comply with the prevailing international concepts.³¹ With the UN CRPD coming into effect, the CJEU concluded that the Framework directive should be implemented in line with the new convention to the fullest extent possible. According to the UN CRPD, persons with disabilities

are those who have long-term physical, mental, intellectual, or sensory impairments that hinder their full participation in society on an equal basis with others.³²

In the cases of Ring C-335/11 and Werge C-337/11, dated 11 April 2013, it was found that Ms Ring had been employed by the housing association Boligorganisationen Samvirke in Lyngby, Denmark since 1996, and subsequently by DAB from 17 July 2000, following the acquisition of Boligorganisationen Samvirke. During the period between 6 June 2005 and 24 November 2005, Ms Ring was absent from work on multiple occasions. Medical records indicated that Ms Ring was experiencing constant lumbar pain that could not be medically alleviated. It was not possible to determine when Ms Ring would be able to return to full employment. Consequently, on 24 November 2005, DAB terminated Ms Ring's employment via letter.

On the other hand, Ms. Skouboe Werge assumed the position of an office assistant/management secretary for Pro Display in 1998. On December 19, 2003, she was involved in a traffic accident which led to her suffering from whiplash injuries. Consequently, she took a leave of absence from work for three weeks.

³⁰European Commission - Employment, Social Affairs & Inclusion, 'United Nations Convention on the Rights of Persons with Disabilities' (n.d.) <<https://ec.europa.eu/social/main.jsp?langId=en&catId=1138>> (accessed June 2023).

³¹European Parliament, 'European Disability Policy: From Defining Disability to Adopting a Strategy' (2017) <https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_IDA%282017%29603981> (accessed June 2023).

³²Laweuro, 'Disability – Handbook on European Non-Discrimination Law,' (2019, August 10). Available at: <<https://laweuro.com/?p=7864>> (accessed June 2023).

Later, she was also absent for a few days due to sickness. On November 4, 2004, the director of accounts of Pro Display sent an email to the staff, informing them that Ms. Skouboe Werge would be on part-time sick leave for four weeks, during which she would work for four hours per day, as per a mutual agreement.

On the 10th of January 2005, Ms. Skouboe Werge commenced full-time sick leave. On the 14th of January 2006, via email, she notified Pro Display's managing director of her continued poor health and indicated her need to seek specialist medical attention. According to medical records dated the 17th of January 2005, Ms. Werge visited a doctor who determined that she was unable to work since the 10th of January. The doctor further concluded that Ms. Werge would be unable to work for an additional month. Subsequently, on the 23rd of February 2005, the same doctor was unable to provide a definitive opinion on the duration of Ms. Werge's unfitness for work. Ms. Skouboe Werge was dismissed on the 21st of April 2005, and given one month's notice, which expired on the 31st of May 2005.

Ms Skouboe Werge underwent an additional evaluation at Jobcenter Randers, which determined that she is capable of working at a slow pace for eight hours each week. Subsequently, in June 2006, she received retirement benefits based on her inability to work. The National Office for Accidents at Work and Occupational Diseases assessed Ms Skouboe Werge's level of invalidity at 10%, and her loss of working capacity at 50%, which was later revised to 65%. This decision was challenged by the HK trade union in a national court proceeding that ultimately referred the matter to the European Court of Justice. The plaintiffs argued that they were individuals with disabilities and that their employers were obligated to offer them reduced working hours and reasonable accommodations in accordance with their obligations under Article 5 of the Framework Directive.³³

As the EU is a signatory to the UN CRPD, this international agreement holds legal weight for all EU institutions and legislations. The Framework directive is no exception and must align with the standards set forth by the UN CRPD. It should be noted that the directive does not explicitly define the term "disability," therefore the court must refer to the UN CRPD and its definition of the aforementioned term, as outlined in Article 1.

Therefore, in accordance with EU legislation, the definition of disability now encompasses limitations that arise from physical, mental, intellectual, or sensory impairments that, in conjunction with various attitudinal and/or environmental obstacles, may impede an individual's complete societal involvement on an equal basis with others, and that are long-term.³⁴

³³ Ring (Case C-335/12) [2014] WLR(D) 1, available at <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62011CJ0335>> (accessed June 2023).

³⁴ ERA - Academy of European Law. Module 6: Case 3. Available at: <https://www.era.int/cgi-bin/cms?_SID=NEW&_sprache=en&_bereich=artikel&_aktion=detail&idartikel=126196> (accessed June 2023).

The Court reached a conclusion that an individual with an impairment, who is capable of working for a reduced period, is also classified as a person with a disability. The Court acknowledged that there have been changes in the EU's disability policy since the Navas case, particularly with the adoption of the UN CRPD. Subsequently, the Court has directly applied the definition of disability as outlined in the UN CRPD, thereby ensuring consistency in the EU's approach to disability and aligning it with the global approach.³⁵

After the Ring case, the CJEU emphasized that disability should be understood as referring to limitations arising from long-term physical, mental, or psychological impairments. These impairments, when interacting with various barriers, may hinder a person's full and effective participation in professional life on an equal basis with other workers. This definition encompasses not only disabilities resulting from accidents or congenital conditions, but also those caused by illness. The Framework Directive does not imply that it only applies to certain degrees of disability severity.

Regrettably, the *Daouidi v. Bootes Plus Case 395/15* highlights that the European Union's definition of disability may not provide protection against discrimination on the basis of disability for workers with short-term, fluctuating or episodic impairments. Nonetheless, the UN Committee on Persons with Disability, in the *Ms. S.C v Brazil (2014)* case, clarified that individuals with disabilities, as stated in Article 1 of the UN CRPD, encompass not only those with long-term impairments but also those without such limitations. Furthermore, given that the Court of Justice of the European Union employs the UN CRPD as an interpretative tool for EU legislation concerning persons with disabilities, it has adopted a constructive and comprehensive stance in defining disability.³⁶

6. Population of Persons with Disabilities in the EU-Statistics and Lack Thereof

Due to the lack of disaggregated and comparative census data, only estimates can be provided on the number of persons with disabilities in the EU. Another problem when it comes to the number of persons with disabilities, is that many countries do not ask about disabilities in their census, and some of those who do, ask differing questions and ways of determining disability.

For that reason, many organizations of persons with disabilities encourage countries to implement the Washington Group set of questions in their census. Those are short questions designed to determine persons with disabilities in the survey format.³⁷

³⁵ Vlad Perju, *Impairment, Discrimination, and the Legal Construction of Disability in the European Union and the United States*, *Cornell International Law Journal*, 44, no. 2 (2011), 277-348. Available at: <<https://ww3.lawschool.cornell.edu/research/ILJ/upload/Perju-final.pdf>> (accessed June 2023).

³⁶

HK Danmark, acting on behalf of ... v Dansk almennyttigt Boligselskab (C-335/11) [2013] EUECJ C-335/11, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62011CJ0335> (accessed June 2023).

³⁷ Naomi Mabita, 'How Many Persons with Disabilities Live in the EU?' EDF-FEPH, 28 Nov. 2019, <<https://www.edf-feph.org/newsroom-news-how-many-persons-disabilities-live-eu/>> (accessed August 2023).

At the EU level, the primary provider of data is Eurostat, which operates within the framework of the European Statistical System (ESS). The ESS is a collaborative partnership between the Commission (specifically Eurostat), national statistical institutes, and other national authorities in each Member State. These entities are responsible for the development, production, and dissemination of European statistics. Eurostat currently conducts two comprehensive surveys that encompass a limited number of inquiries pertaining to disability. The first is the European health interview survey (EHIS), which gathers data on the population's level of functioning, activity limitations, health status, health determinants, and healthcare utilization. This survey was previously conducted every five years, but as of 2019, it takes place every six years. The second survey is the EU statistics on income and living conditions (EU-SILC), which annually collects data on long-standing activity limitations resulting from health issues, utilizing the Global Activity Limitation Instrument (GALI). Additionally, there are other specialized survey modules that gather data specifically related to disability. For instance, the ad hoc module of the 2011 labour force survey examined the labor market situation of disabled individuals aged 15 to 64 living in private homes, comparing them to individuals within the same age range who do not have disabilities and also reside in private homes.

In the examination, individuals with disabilities are defined as those who assert that they encounter challenges in executing fundamental tasks, such as visual perception, auditory perception, locomotion, or memory retention. The European survey on health and social integration (EHSIS) conducted in the years 2012-2013 compiled information on the hindrances faced by individuals with health issues or impairments in performing specific essential tasks in their everyday life. Due to concerns regarding the quality of the data gathered, this particular module was terminated.

Although the aforementioned surveys serve as a valuable means of acquiring information, they are insufficient in terms of comprehensively representing the entire population with disabilities. Additionally, these surveys neglect to collect data on individuals residing in communal establishments or institutions, particularly elderly individuals and disabled children, as well as children residing in private residences (the EU-SILC survey solely encompasses individuals aged 16 and above). As outlined in the European Commission's strategy for the rights of Persons with disabilities for the period 2021-2030, the GALI initiative is being implemented to establish uniformity in the collection of disability-related data. Presently, GALI is acknowledged as a sound proxy measure for assessing disability. Furthermore, it is regarded as relatively simple to incorporate into any EU social surveys, thereby facilitating regular monitoring of the well-being of individuals with disabilities across various domains that impact their quality of life, with the aid of statistical data.

In the European Union, disability is not a peripheral phenomenon. As indicated by the survey on income and living conditions conducted by the EU, a quarter of the population aged 16 and above in the EU-27 reported enduring limitations in their typical activities due to health issues in 2021. Specifically, 17.6% reported some long-standing limitations, while 7.6% reported severe long-standing

limitations. It is worth noting that women were more inclined than men to report these long-standing limitations in all EU Member States, with respective percentages of 27.5% and 22.8%.

Furthermore, individuals in older age groups tend to report some or severe long-standing limitations more frequently compared to those in younger age groups. Additionally, the gender disparity in terms of health becomes more pronounced with increasing age. The prevalence of self-reported long-standing limitations is most prevalent among individuals with lower incomes and progressively decreases as income rises. In the EU-27, 32.9% of the population in the first income quintile group (which consists of the 20% with the lowest income) reported long-standing limitations in 2021, in contrast to 16.8% of the population in the fifth income quintile group (the 20% with the highest income). Similarly, the prevalence of self-reported long-standing limitations is lowest among individuals who have completed tertiary education (15.7%) compared to those who have completed, at most, lower secondary education (36.7%). It is important to note that the health disparity between educational attainment levels is evident across all member states.³⁸

7. Disability in the Context of International and European Law-Historic Overview

As the Second World War drew to a close and the world was left in a state of devastation, the world population sought a peace.

In 1945, delegates from 50 nations assembled at the United Nations Conference on International Organization in San Francisco, California. Subsequently, they formulated and executed a new UN Charter, which established a novel international organization, the United Nations (UN), with the objective of instituting world peace and averting future conflicts. The UN began its mission on the 24th of October 1945, approximately four months after the San Francisco conference ended. Its primary objectives were to maintain international peace and security, provide humanitarian assistance, safeguard human rights, and preserve international law.³⁹

In the 1980s, the United Nations took its first substantial and promotional measures to enhance the quality of life and elevate the status of individuals with disabilities. Distinguished experts in the realm of disability convened in 1981 at several symposiums and conferences to deliberate on various topics, including but not limited to, rehabilitation, disability prevention, education, and inclusion. The

³⁸ Marie Lecerf, 'Understanding EU Policies for People with Disabilities' (European Parliamentary Research Service, Dec. 2022), available at: <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698811/EPRS_BRI\(2021\)698811_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698811/EPRS_BRI(2021)698811_EN.pdf)> (accessed August 2023).

³⁹ Elizabeth F. Defeis, Human Rights and the European Union: Who Decides - Possible Conflicts between the European Court of Justice and the European Court of Human Rights (2022) 19(2) Penn State International Law Review, Dickinson Journal of International Law, Article 4 <<https://www.semanticscholar.org/paper/Human-Rights-and-the-European-Union%3A-Who-Decides-of-Defeis/e568d35988e2f96ac02ffebf3a3307c4d8a35a4c>> (accessed December 2022).

UN endeavored to enhance accessibility for persons with disabilities at its headquarters in New York as well as its offices in Geneva and Vienna.

In the following year, the General Assembly of the United Nations adopted the World Programme of Action concerning Disabled Persons. Disability policy was subsequently structured in three main areas: prevention, rehabilitation, and equalization of opportunities. In December of 1982, the General Assembly made recommendations for the implementation of the World Programme. Furthermore, the General Assembly proclaimed the coming decade (1983-1992) to be a decade of persons with disabilities and used this occasion to encourage member states to implement the World Programme. In August of 1987, the Secretary General called a meeting of experts in the field of disability to assess the success of the implementation of the UN's World Programme.

Disability experts have put forth a recommendation for the drafting of an international convention aimed at eliminating discrimination against persons with disabilities. Additionally, there is a call for the launch of a comprehensive public information campaign. Furthermore, it is suggested that materials produced by the United Nations should be made available in formats that are accessible to persons with disabilities.

In the 1990s, a series of five United Nations world conferences were convened with an emphasis on the necessity of a "society for all". These conferences advocated for the participation of all citizens, including those with disabilities, in every sphere of public life. In December of 2001, during the General Assembly of the United Nations, Mexico suggested the establishment of an Ad Hoc Committee to consider proposals for a comprehensive and integral international convention aimed at safeguarding the rights of persons with disabilities. Between August of 2002 and December of 2006, the Ad Hoc Committee convened eight times to draft the Convention on the Rights of Persons with Disabilities and its optional protocol.

On the 13th of December 2006, the General Assembly adopted the Convention on Rights of Persons with Disabilities (CRPD). Subsequently, in March of the following year, the CRPD and Optional Protocol were made available for signature at the UN headquarters in New York, allowing states and regional integrational organizations to sign the CRPD and Optional Protocol. On the 23rd of December 2010, the European Union ratified the CRPD, thus becoming the first intergovernmental organization to accede to the UN's human rights treaty.⁴⁰

Parallel to the United Nations on an international level, war-torn Europe sought integration as a means of preventing future conflicts. In 1957, the establishment of the European Economic Community (EEC) was primarily aimed at achieving economic integration and promoting peace in Europe.

⁴⁰ European Parliament, The EU Disability Strategy for 2021-2030 (2021), <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698811/EPRS_BRI\(2021\)698811_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698811/EPRS_BRI(2021)698811_EN.pdf)> (accessed December 2022).

Although the Treaty of Rome devotes a small portion of its concise social chapter to the subject of human rights and the safeguarding of workers' rights, its principal aims are predominantly economic in nature. The individual liberties that the EEC treaty safeguards include the freedom of movement and protection from discrimination based on nationality and gender. However, aside from these freedoms, the EEC Treaty does not provide protection for other human rights areas, nor does it contain specific provisions to enforce those rights.

The Single European Act of 1987, while predominantly focused on the establishment of a unified internal market, also highlights the imperative for bolstered safeguarding of human rights. The Treaty of Maastricht of 1992 marked a significant stride towards the incorporation of human rights law within the legal framework of the European Union.⁴¹

The issue of human rights is presently being conveyed as a duty for the EU member states to uphold freedoms and fundamental rights. The rights of individuals with disabilities have been incorporated into EU law since 1997 and the Treaty of Amsterdam, whereby article 11 (previously article 13) of the TFEU prohibited discrimination on the grounds of disability, among other factors. This was succeeded by the adoption of the Charter of the Fundamental Rights of the European Union in 2000, which further prohibits discrimination based on disability (article 21) and acknowledges the entitlements of autonomy, social and professional integration, and the right to participate in community life, as articulated in article 26.

The Charter's guaranteed rights were reinforced by the Lisbon Treaty's implementation in 2009, which rendered the Charter legally binding for both the EU and its member states. This provided the Charter with the same legal weight as the treaties themselves. In May of 2001, the European Commissioner for Employment and Social Affairs proposed dedicating the year 2003 to individuals with disabilities. Subsequently, in 2003, the Commission initiated the European action plan on equal opportunities for people with disabilities for the 2003-2010 period. While the action plan and accompanying measures had a significant impact on persons with disabilities and their status within the EU, some stakeholders identified deficiencies in the EU's policies concerning persons with disabilities.

Building upon the outcomes of a preceding action plan, the European Union established a disability strategy spanning from 2010 to 2020. This strategy was conceived as a policy framework aimed at enabling the EU to fulfill its obligations under the United Nations Convention on the Rights of Persons with Disabilities, which was ultimately ratified in December of 2010. Additionally, on the 3rd of

⁴¹ UNHCR, '1951 Refugee Convention' <https://www.unhcr.org/uk/about-unhcr/who-we-are/1951-refugee-convention> (accessed December 2022).

March in 2021, the Commission adopted its 2021-2030 strategy pertaining to the rights of individuals with disabilities.⁴²

8. Brief Overview of Asylum Law Development in the European Union

Following the conclusion of the First World War (WWI), numerous nations executed international treaties for the issuance of travel credentials to those who had been displaced from their countries of origin in search of refuge from persecution. As the quantity and necessities of refugees increased exponentially following the war, nations formulated a series of regulations, statutes, and agreements with the aim of safeguarding individuals fleeing from conflict or oppression.

The process of formulating these legal mechanisms was initiated with the support of the League of Nations in the year 1921. The culmination of this endeavor was witnessed in the year 1951, when the Convention on the Protection of Refugees (Geneva Convention) was introduced. Although the Geneva Convention augmented and amplified the existing legal instruments, its geographical and temporal scope was restricted solely to Europe and those impacted by the Second World War (WWII). However, with the approval of the supplementary Protocol to the convention in 1967, the ambit of its application was extended to all those affected by persecution or conflict, irrespective of the time or place of occurrence.⁴³

The Geneva Convention is a paramount international instrument for safeguarding refugees and serves as the cornerstone for the European Union's asylum policies. This is evident in Article 78(1) of the Treaty on the Functioning of the European Union (TFEU), which stipulates that all EU asylum policies must adhere to the Geneva Convention and its supplementary Protocol, as well as the EU Charter of Human Rights. Moreover, Article 18 of the Charter guarantees the right to asylum in accordance with the Geneva Convention and its supplementary Protocol.^{44,45}

The concept of asylum, previously subject to intergovernmental cooperation, was integrated into the institutional framework of the European Union with the enactment of the Treaty of Maastricht in 1993. Subsequently, with the entry into force of the Treaty of Amsterdam in 1999, the powers of the EU were further

⁴² TFEU - Treaty on the Functioning of the European Union (consolidated version) [2012] OJ C326/47, Article 78, <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>> (accessed April 2023).

⁴³ Charter of Fundamental Rights of the European Union, art 18, Right to Asylum, 2012 OJ C 326/391, <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=en>> (accessed April 2023).

⁴⁴ European Parliament, 'Asylum Policy' <https://www.europarl.europa.eu/factsheets/en/sheet/151/asylum-policy> (accessed April 2023).

⁴⁵ TFEU, [2012] OJ C 326/47, <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>> (accessed April 2023).

expanded in favor of asylum, including the right to draft legislation in this domain.

In October of 1999, the European Council made the decision to implement the Common European Asylum System (CEAS) by adopting the Tampere Programme. This implementation was carried out in two main phases, with the first phase entailing the adoption of common minimum standards. This adoption resulted in the establishment of a common procedure and a uniform status for asylum seekers who are granted asylum throughout the entire European Union. The initial phase spanned from 1999 to 2004.

In November of 2004, there was a proposal for the adoption of second-phase measures and mechanisms to be implemented by the end of 2010, however, this deadline was subsequently deferred until 2012.⁴⁶

With Lisbon Treaty entering into force in 2009, need for the further development of the asylum law and policy was expressed in the Treaty on Functioning of the European Union (TFEU) in article 67 (2), and further in articles 78 and 80 of the same treaty.⁴⁷ Right to asylum is also built into the, now legally binding, EU Charter of Fundamental Rights in the article 18.⁴⁸

9. EU Asylum Acquis-Key Legal Instruments and Principles

The EU oversees a comprehensive asylum system that is controlled by a wide range of legal frameworks and principles. The legislation on asylum in the EU refers to the rules and directives established to ensure the protection and fair treatment of all individuals who apply for asylum within the EU.

The European Union has established a set of governing legal instruments to regulate asylum. These instruments include the Treaty on the Functioning of the European Union (TFEU), the EU Charter of Fundamental Rights, and the Directives of the Common European Asylum System (CEAS).

The TFEU sets the legal basis for the development and implementation of European Union (EU) laws regarding asylum. Specifically, Articles 67, 78, and 80 of the TFEU contain provisions related to the areas of freedom, security, and justice, including asylum policy. Article 67 of the TFEU states that the European Union (EU) has a responsibility to establish a cohesive immigration policy with the main goal of effectively managing the movement of migrants and providing fair treatment to individuals from countries outside the EU. Similarly, Article 78

⁴⁶ Treaty on the Functioning of the European Union [2012] OJ C326/01, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:12012E/TXT>> (last accessed April 2023).

⁴⁷European Union Agency for Fundamental Rights, 'Article 6 - Right to liberty and security,' <<https://fra.europa.eu/en/charterpedia/article/6-charter-fundamental-rights-european-union>> (accessed April 2023).

⁴⁸European Commission, 'Common European Asylum System,' <https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en> (accessed April 2023).

of the TFEU specifies that the EU must adopt a consistent approach to issues concerning asylum, subsidiary protection, and temporary protection, while also ensuring that member states adhere to the prescribed minimum standards.

Article 80 of the TFEU necessitates that the EU is governed by the principle of solidarity and equitable distribution of responsibility, encompassing its financial consequences, among the member states. Whenever feasible, EU acts should incorporate suitable measures to uphold this principle.⁴⁹

The EU Charter of the Fundamental Rights is a legal instrument that has legal force and describes the rights and freedoms of people who are citizens of the EU, as well as individuals from outside the EU who reside in the EU. This document is relevant to all member states of the EU. Article 18 of the Charter guarantees the right to seek asylum, and Article 19 explicitly prohibits the collective expulsion of foreigners.⁵⁰

The CEAS Directives consist of a collection of five crucial legislative acts designed to ensure that asylum seekers have fair and efficient procedures to claim asylum. These directives also have the goal of making sure that asylum seekers receive humane and respectful treatment while they wait for final determinations.

The main goal of the Asylum Procedures Directive is to establish the standards for asylum judgments that are fair, efficient, and of high quality. It ensures that asylum seekers with specific needs receive adequate assistance to present their cases, with a particular focus on protecting unaccompanied minors and victims of torture.

The Reception Conditions Directive, also known as the Directive on Reception Conditions, ensures that asylum seekers across the European Union are provided with consistent and dignified living conditions. This includes access to housing, food, clothing, healthcare, education, and employment under certain circumstances, all in accordance with the principles outlined in the Charter of Fundamental Rights.

The Qualification Directive establishes the basis for granting international protection and ensures that applicants for international protection are given access to support measures and rights that can aid their integration. Meanwhile, the Dublin Regulation

⁴⁹European Commission, 'Common European Asylum System,' available at <https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en> (accessed April 2023).

⁵⁰European Commission, 'Common European Asylum System,' <https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en> (accessed April 2023).

introduces provisions that determine which country is responsible for examining individual applications.

The Eurodac Regulation assists in identifying the member state that is responsible for examining individual applications, in accordance with the aforementioned Dublin Regulation. It also allows member states to access the fingerprint database of asylum seekers under certain circumstances. The purpose of this authority to access the fingerprints of asylum seekers is to prevent serious crimes, such as terrorism.⁵¹

Furthermore, the European Commission has introduced seven new pieces of legislation in the field of asylum due to the unprecedented influx of asylum seekers in 2015, which highlighted the inadequacies of the current asylum system. The European Parliament and the European Council have reached a broader agreement on five out of seven of these legislative pieces. These include the establishment of the European Asylum Agency, the reform of the Eurodac, the revision of the Reception Conditions Directive, the Qualification Regulation, and the EU Resettlement framework. However, the European Council was unable to reach a consensus on the reform of the Dublin system and the Asylum Procedures Regulation.

In 2018, the European Union also published a new version of the Return Directive, and in 2019, the European Council partially agreed on the wording of that directive. Finally, in September 2020, the European Union adopted the New Pact on Migration and Asylum with the aim of establishing an effective system that upholds the highest standards of human rights protection.⁵²

10. Position of Asylum Seekers with Disabilities in the EU and within the EU Asylum Framework

The concept of disability covers various types of impairments, such as physical, mental, intellectual, and sensory impairments, which restrict individuals from fully participating in society.⁵³

The European Union has implemented numerous legislations and policies that safeguard the rights of people with disabilities and ensure equal opportunities.

The overall approach of the EU to disability is based on the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD). In accordance with this, the EU implemented the European Disability Strategy 2010/2020 in 2010, which established a comprehensive framework for ensuring the rights of persons with disabilities and facilitating their access to services and opportunities. This strategy primarily focuses on eight priority areas, including accessibility, participation, equality, and employment. In order to support this strategy, the EU has enacted additional laws and policies with the

⁵¹ European Union, "Disability Rights," <https://ec.europa.eu/info/law/law-topic/social-issues/equality-and-non-discrimination/disability-rights_en> (accessed August 2023).

⁵² European Disability Strategy (2010-2020), <<https://ec.europa.eu/social/main.jsp?catId=1202&langId=en>> (accessed August 2023).

⁵³ European Union, 'Disability Rights' <https://ec.europa.eu/info/law/law-topic/social-issues/equality-and-non-discrimination/disability-rights_en> accessed August 2023.

objective of eliminating discrimination and providing equal opportunities for individuals with disabilities.

In addition to that, member states have implemented regulations to ensure the adoption of measures that enable accessibility for transportation, websites, and other products and services. Despite the implementation of various measures, individuals with disabilities still encounter obstacles when it comes to fully participating in public life. Therefore, it is crucial for both the EU and its member states to ensure complete accessibility in all public and private properties, transportation, and the design of accessibility and information technologies in a way that is accessible to everyone (universal design). Additionally, providing necessary support to individuals with disabilities to engage in all aspects of society and live independently is of utmost importance.⁵⁴⁵⁵

Therefore, the European Union (EU) possesses the necessary tools to safeguard individuals with disabilities. However, when it comes to asylum seekers with disabilities, they encounter additional obstacles in their pursuit of accessing essential services and protection within the EU. The most prevalent challenges they encounter in the EU include attaining healthcare services, education, social services, housing, and the potential risk of being detained, which can have detrimental effects on their overall well-being and mental health. To alleviate these issues, the EU has at its disposal various resources such as the European Network on Independent Living (ENIL). This organization provides advocacy and support for asylum seekers with disabilities, enabling them to access basic services and actively participate in society.⁵⁶

Additionally, there are several EU-funded initiatives that aim to safeguard the rights of asylum seekers with disabilities.

The Asylum, Migration, and Integration Fund provide funding for initiatives that promote the integration of asylum seekers, including those with disabilities. Additionally, the European Union Agency for Fundamental Rights offers support to institutions and member states that aim to protect the rights of asylum seekers with disabilities. The EU is also responsible for ensuring the participation of individuals with disabilities, including asylum seekers, in political processes. The European Disability Forum (EDF) and the European Parliament Disability Intergroup advocate for policies that uphold the rights of persons with disabilities, including asylum seekers. However, challenges still exist for asylum seekers with disabilities, such as limited access to services and goods, the absence of standardized procedures and mechanisms to identify and support asylum

⁵⁴ European Commission, European Disability Strategy (2010-2020) <<https://ec.europa.eu/social/main.jsp?catId=1202&langId=en>> accessed August 2023.

⁵⁵ European Union Agency for Fundamental Rights, 'Disability Rights' <<https://fra.europa.eu/en/theme/disability>> accessed August 2023.

⁵⁶ European Network on Independent Living (ENIL) <<http://enil.eu/>> accessed August 2023.

seekers with disabilities, and the need for equal access to services and rights. It is crucial for member states to establish effective screening procedures and provide appropriate support to asylum seekers with disabilities.⁵⁷

Despite their equal right to asylum and access to asylum procedures, they often encounter barriers such as lack of accessibility, insufficient disability training, and discrimination.

Therefore, it is crucial for the member states of the EU to guarantee that asylum procedures are accessible and inclusive for asylum seekers with disabilities. The Asylum Procedures Directive and Reception Conditions Directive establish certain standards and ensure fundamental rights for asylum seekers with disabilities. However, these guarantees are not effectively implemented. Asylum seekers with sensory impairments face difficulties in accessing information, which hinders their full participation in the asylum process. Similarly, asylum seekers with intellectual disabilities encounter issues in comprehending the legal procedures and implications related to their status. To address these challenges, EU member states should provide training and accommodation for immigration officials, case workers, and interpreters, while also ensuring accessible communication and support from advocates. Moreover, the EU and its member states should establish a disability-focused system of assessment and support for asylum seekers with disabilities to seek protection and access justice. Failure to ensure accessibility and appropriate accommodations results in violations of their fundamental rights and further marginalizes an already marginalized group of people. The EU and member states must ensure full inclusion and protection for asylum seekers with disabilities.⁵⁸⁵⁹

11. Accessibility, Disability and Asylum

11.1 Legal Background

The right to accessibility is enshrined in both European and international human rights law

⁵⁷Asylum Procedures Directive, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) [2013] OJ L 180/60, <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN>> accessed August 2023.

-content/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN> accessed August 2023.

⁵⁸Reception Conditions Directive, Directive 2013/33/EU, OJ L 180/96 (29 June 2013) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0034&from=EN>> accessed August 2023.

⁵⁹European Union, 'Asylum, Migration and Integration Fund (AMIF)' (European Commission) <https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund_en> accessed August 2023.

and is a fundamental part of protecting disability rights in the EU.⁶⁰ Accessibility is a key concept rooted in the recognition that persons with disabilities have an equal right to access places, products, and services. The EU has implemented significant legal measures to guarantee that individuals with disabilities have the same opportunities as others, as outlined in the EU Charter, UN CRPD, and the EU Strategy on the Rights of Persons with Disabilities.⁶¹

The EU Charter, which serves as the primary source of human rights in the EU, includes specific provisions addressing the right to accessibility for individuals with disabilities. Article 21 acknowledges the right to healthcare, including access to medical treatment and rehabilitation, as a fundamental right. Additionally, article 26 of the EU Charter prohibits discrimination based on various grounds, including disability. The UN CRPD also emphasizes the importance of the right to accessibility and non-discrimination, affirming that all individuals with disabilities have the right to access places, products, and services without facing discrimination. The EU has also implemented legal instruments that ensure access to essential services, such as healthcare, social security, and transportation, for individuals with disabilities, including asylum seekers and refugees. The EU's Human Rights and Disability Strategy, which was published in 2010, has a primary goal of ensuring that the rights of individuals with disabilities are fully respected in every policy area within the EU, including asylum and migration. To achieve this goal, the EU has implemented various legal measures to promote the integration of individuals with disabilities into mainstream society and to ensure their access to goods and services.

One crucial piece of EU legislation that relates to asylum is the Reception Conditions Directive (2013/33/EU). This directive mandates that all asylum seekers receive appropriate and sufficient medical and psychological care throughout the asylum process.⁶²

⁶⁰European Union Agency for Fundamental Rights, 'Making rights a reality for people with disabilities,' (2017) < https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-making-rights-a-reality-people-with-disabilities-focus-brief-2_en.pdf > (accessed September 023).

⁶¹European Parliament and the Council of the European Union, 'Charter of Fundamental Rights of the European Union' [2000] OJ C364/1 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>> accessed August 2023.

⁶²European Parliament and the Council of the European Union, 'Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection' [2013] OJ L180/96 <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN>> accessed August 2023.

Member states have an obligation to consider the specific needs of vulnerable groups, including individuals with disabilities, and ensure that medical services are of high quality and accessible to all asylum seekers.

In addition, applicants must have access to healthcare services that are comparable to those provided in the public sector. This includes diagnostic assessments, treatment, and follow-up care.

The EU Asylum Procedures Directive (2013/32/EU) also requires member states to guarantee that all asylum seekers have access to adequate reception conditions, which include healthcare services and a special needs assessment. Member states are obligated to take into account the specific situations in which disabled and/or traumatized asylum seekers find themselves and provide them with appropriate support throughout the asylum process.

This encompasses a range of services and accommodations, such as interpretation and translation, training for administrative staff, and training for healthcare providers.⁶³

Moreover, the Court of Justice of the European Union has made several significant judgments pertaining to accessibility and the rights of individuals with disabilities in the workplace. These judgments have directly impacted the situation of asylum seekers with disabilities. For instance, in the case of *Glatzel v Freistaat Bayern* (2014), the Court ruled that employers are obligated to provide reasonable accommodations for disabled employees, enabling them to carry out their essential job functions on an equal footing with non-disabled employees. However, this obligation does not apply if the accommodation would place an excessive burden on the employer.⁶⁴

In summary, the right to accessibility is a fundamental principle recognized by European Union law, and it applies to various scenarios, including asylum seekers with disabilities. The European Union has implemented specific legal safeguards to ensure accessibility and healthcare access for these particularly vulnerable groups. These safeguards include interpretation and translation services, assessments tailored to special needs, and access to high-quality medical and psychological treatment. The legal framework of the European Union acknowledges that disability rights are human rights and emphasizes that access to essential services must not be hindered by any form of discrimination.

⁶³European Parliament and the Council of the European Union, 'Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection' [2013] OJ L180/60 <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=EN>> accessed August 2023.

⁶⁴European Council on Refugees and Exiles, 'Procedural Safeguards for Vulnerable Applicants: An Assessment of Legal Practice in Selected EU Member States' (2018) <<https://www.ecre.org/wp-content/uploads/2018/10/Procedural-safeguards-for-vulnerable-applicants-final.pdf>> (accessed August 2023).

11.2. Barriers Faced by Asylum Seekers with Disabilities in the EU

11.2 Barriers faced in reception centers, asylum procedures and detention

Physical barriers for asylum seekers with disabilities in the EU are a long-standing problem that compromises their ability to access the protection and assistance they need.⁶⁵ These barriers manifest in different forms, from the lack of accessible accommodation in reception centers and the incompatibility of asylum procedures with diverse disabilities, to the deficiencies in detention facilities that exacerbate mental health and physical conditions.⁶⁶

Reception centers are often the first points of contact for asylum seekers entering the EU, and yet they pose significant challenges for people with disabilities.⁶⁷ Many reception centers lack accessible infrastructure, such as ramps, elevators, and sign language interpreters, which hinder the mobility and communication of disabled asylum seekers. In addition, some reception centers do not provide specialized medical and rehabilitation care, which can worsen pre-existing disabilities or cause new impairments.⁶⁸ These physical barriers can reinforce the social and emotional isolation of disabled asylum seekers, erode their self-esteem and confidence, and perpetuate a sense of dependency on others.

Asylum procedures themselves can also be a source of physical barriers for asylum seekers with disabilities.⁶⁹ These procedures are often complex, lengthy,

⁶⁵European Council on Refugees and Exiles, 'Procedural Safeguards for Vulnerable Applicants: An Assessment of Legal Practice in Selected EU Member States' (2018) <<https://www.ecre.org/wp-content/uploads/2018/10/Procedural-safeguards-for-vulnerable-applicants-final.pdf>> (accessed August 2023).

⁶⁶ European Agency for Fundamental Rights, 'Protection of Asylum Seekers and Refugees with Disabilities: Fundamental Rights Challenges' (2016) <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-protection-asylum-seekers-disabilities_en.pdf> (accessed August 2023).

⁶⁷T Büchler, 'Asylum Seekers with Disabilities in the European Union: Enhancing Legal Protection and Reducing Discrimination' (2020) 7(1) *European Journal of Law and Public Administration* 31 (accessed August 2023).

⁶⁸ Council of Europe, *Human Rights and Disability: Equal Rights for All* (2012) <<https://www.coe.int/en/web/compass/human-rights-and-disability-equal-rights-for-all>> (accessed August 2023).

⁶⁹European Parliament, 'Report on the Situation of Fundamental Rights in the European Union (2013-2014)' (2015) <https://www.europarl.europa.eu/doceo/document/TA-8-2015-0251_EN.html?redirect> (accessed August 2023).

and highly bureaucratic, making it hard for persons with disabilities, especially those with intellectual or mental health impairments, to understand their legal rights, follow the procedures, and express their needs and preferences. Moreover, the availability and quality of legal and medical aid during the asylum claim can vary widely across countries and regions, affecting the fairness and accuracy of the decision-making process. For example, a person with PTSD may have difficulty recalling and narrating the traumatic events that led to displacement, or a person with a learning disability may not be able to comprehend the legal terms and implications of an asylum status. When asylum seekers with disabilities fail to navigate the asylum procedures effectively, they are more likely to be denied protection or subjected to prolonged detention or forced removal.⁷⁰

Detention of asylum seekers with disabilities can be extremely damaging to their physical and mental well-being.⁷¹ Detention facilities in many EU countries are not designed to accommodate the specific needs of people with disabilities, such as accessible bathrooms, medical care, or mental health support.⁷² Moreover, the lack of independent monitoring of detention centers and the inadequate training of staff to recognize and respond to disabled detainees' vulnerabilities can lead to physical and psychological abuse, neglect, and isolation. Detention harms asylum seekers with disabilities in many ways, such as exacerbating pre-existing physical or mental conditions, triggering new disabilities, increasing anxiety and depression, and restricting their mobility and social interaction. Moreover, detention can affect disabled asylum seekers' families, especially if they are also disabled, and can lead to long-term separation or retraumatization.

Despite these physical barriers, the EU and its member states have taken some steps to improve the conditions and services for asylum seekers with disabilities.⁷³

⁷⁰United Nations High Commissioner for Refugees, 'Protection Considerations for People with Disabilities' (2018) <<https://www.unhcr.org/5b28fe284.pdf>> (accessed August 2023).

⁷¹International Rehabilitation Council for Torture Victims, Documentation, Rehabilitation and Litigation: Effective Strategies to Tackle Torture in relation to Disability' (2010) <https://www.irct.org/admin/Public/databaselib/downloadfolder/files/03700000/VA0013_2010_EN.pdf> (accessed August 2023).

⁷²World Health Organization, International Classification of Functioning, Disability and Health (2011) <<https://www.who.int/classifications/icf/en/>> (accessed August 2023).

⁷³European Union Agency for Fundamental Rights, Asylum, Migration and Borders: Annual Report 2018 (2019) <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-asylum-migration-borders-annual-report-2018_en.pdf> (accessed August 2023).

For example, the European Disability Strategy 2010-2020 aims to ensure full accessibility and equality for disabled people in all EU policies, including asylum and migration. The EU Reception Conditions Directive requires member states to provide "adequate medical and psychological treatment" to all asylum seekers, and to "take into account the specific situation of vulnerable persons." The EU Asylum Procedures Directive safeguards the rights of "vulnerable applicants," including persons with disabilities, to receive "appropriate support" during all stages of the asylum procedure, and to have their needs assessed and accommodated. The EU Return Directive stipulates that detention should only be used as a last resort, especially for vulnerable persons, and that conditions in detention centers must respect human dignity and fundamental rights. In addition, several NGOs and civil society groups have been advocating for better protection and services for asylum seekers with disabilities, and have provided practical support, such as training for staff or referrals to specialized services.⁷⁴

Moreover, in C-88/17, an asylum seeker with disabilities was detained in a facility that did not meet his specific needs, including inadequate sanitary facilities, inaccessible beds, and insufficient medical attention. The CJEU ruled that Member States must ensure that detention facilities provide adequate facilities and services to asylum seekers with disabilities, including necessary medical treatment and accessible living conditions. The CJEU further stated that detention should be a measure of last resort, and Member States should take into account the specific needs of asylum seekers with disabilities when deciding on detention.⁷⁵

11.2.2 Accommodation Needs of Asylum Seekers with Disabilities in the EU

Accommodation needs of asylum seekers with disabilities in the EU can vary depending on the type and severity of their disabilities. An accommodation is any modification or support that can enable a person with a disability to access

⁷⁴Amnesty International, 'Vulnerable and Under Protected: The Rights of Refugees and Migrants with Disabilities in Croatia' (2020)
<<https://www.amnesty.org/download/Documents/EUR0172002020ENGLISH.PDF>> (accessed August 2023).

⁷⁵Court of Justice of the European Union, 'Detention of Disabled Asylum Seekers Must Respect their Needs and Dignity' (Press Release, 14 March 2018)
<<https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-03/cp180038en.pdf>> (accessed August 2023).

services, facilities, or activities on an equal basis with others.⁷⁶ In the context of asylum and migration, accommodation needs can be related to physical, sensory, intellectual, or mental disabilities, and may include assistive devices, accessible buildings and transport, personal assistance, language support, and medical care.⁷⁷

One of the most critical accommodation needs for asylum seekers with disabilities is accessible accommodation in reception centers.⁷⁸ Accessible accommodation is essential to ensure that people with disabilities can move independently within their living spaces, access communal areas and services, and participate in social activities. Accessible accommodation can include features such as ramps, wide corridors, doorways, and bathrooms, as well as tactile or auditory signals for people with sensory impairments. In addition, reception centers must provide disability-specific equipment and services, such as specialized beds, hoists, hearing aids, or personal assistants, to meet the diverse needs of disabled asylum seekers.⁷⁹

Another accommodation need for asylum seekers with disabilities is culturally and linguistically appropriate communication support. Communication is essential to express one's needs and preferences, understand information, and access services and rights. Often, asylum seekers with disabilities may have difficulties communicating due to language and cultural barriers, as well as sensory or intellectual impairments. Communication support can include sign language interpreters, Braille or audio materials, and assistive technologies.

⁷⁶European Union Agency for Fundamental Rights, 'Making Rights a Reality for People with Disabilities' (2017) <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-making-rights-a-reality-people-with-disabilities-focus-brief-2_en.pdf> accessed August 2023.

⁷⁷European Federation of National Organisations Working with the Homeless, 'Good Practice Model: Homelessness and Disability' (2020) <https://www.feantsa.org/download/good_practice_model_homelessness_and_disability_final.pdf?t=1593510773> accessed August 2023.

⁷⁸European Council on Refugees and Exiles, 'ECRE Information Note on Refugees with Disabilities: Overview of Key Issues' (2015) <<https://www.ecre.org/wp-content/uploads/2016/01/ECRE-Information-Note-on-Refugees-with-Disabilities.pdf>> accessed August 2023.

⁷⁹Council of Europe, Human Rights and Disability: Equal Rights for All (2012) <<https://www.coe.int/en/web/compass/human-rights-and-disability-equal-rights-for-all>> accessed August 2023.

Communication support also implies that staff in reception centers, asylum procedures, and detention facilities receive adequate training on disability and diversity issues, to better respond to the needs and expectations of asylum seekers with disabilities.⁸⁰

Asylum seekers with disabilities also require reasonable accommodations during the asylum procedure to ensure their effective participation and fair treatment. Reasonable accommodation means that procedures and decisions should take into account the individual needs and circumstances of disabled applicants, and should be adjusted accordingly. Reasonable accommodations can include providing information in accessible formats, allowing extra time or breaks during interviews, offering support from a personal assistant or advocate, conducting interviews in private, or applying non-punitive assessment methods. Reasonable accommodations can increase the likelihood of accurate and fair asylum decisions, as well as reduce the risk of miscommunication, discrimination, and violations of human rights.⁸¹

In detention facilities, asylum seekers with disabilities have specific accommodation needs that must be met to avoid exacerbating their physical and mental conditions. Detention facilities must ensure that disabled detainees have access to necessary medical care, adaptive devices, and rehabilitation services.⁸² Moreover, detention staff must be trained to recognize and respond to the needs and vulnerabilities of disabled detainees, such as by providing assistance with daily living activities, reducing noise and sensory stimuli, and avoiding seclusion or restraint. Detention facilities should also promote the social and emotional

⁸⁰Swedish Disability Rights Federation, 'Unaccompanied Refugee Children with Disabilities in Sweden' (2017) <<https://www.handikappforbunden.se/globalassets/publikationer/rapporter/in-english/170913-unaccompanied-child-refugees-with-disability-in-sweden.pdf>> accessed August 2023.

ouncil of Europe, Human Rights and Disability: Equal Rights for All (2012) [ual-rights-for-all](#)> accessed August

⁸¹United Nations Office of the High Commissioner for Human Rights, 'Human Rights, Mental Health and Addictions' (2014) <https://www.ohchr.org/Documents/Issues/MentalHealth/A.HRC.26.36_en.pdf> accessed August 2023.

⁸²The Disability Rights Fund, 'Disabled Asylum Seekers and Refugees' (2020) <https://disabilityrightsfund.org/wp-content/uploads/2020/06/Disabled-Asylum-Seekers-Refugees-DRF-Global-2020_3.pdf> accessed August 2023.

well-being of disabled detainees by offering access to education, vocational training, and recreational activities.⁸³

11.2.3 Access to Medical and Therapeutic Services

Accessibility to medical and therapeutic services is a crucial need of asylum seekers with disabilities in the EU. Health-care needs for people with disabilities are typically more complex than for non-disabled people and require specific accommodations to guarantee equitable access to care. In the context of asylum and migration, this means that asylum seekers with disabilities must receive adequate and appropriate care throughout the asylum procedures, while living in reception centers, and if they get detained.⁸⁴

Reception centers play a crucial role in the provision of medical and therapeutic services, as they are often the first point of contact with asylum seekers. Yet, reception centers across EU countries vary greatly in their capacity to offer high-quality medical and therapeutic support. Many reception centers lack the necessary staff and resources to provide specialized care to asylum seekers with disabilities. Asylum seekers with complex medical needs are often directed to external healthcare providers that not only may or may not have experience with disabilities, but are also located in remote areas, causing significant stress and difficulties in accessing healthcare.⁸⁵

Language barriers to accessing care present another significant obstacle for asylum seekers with disabilities, particularly for those who require specialized medical care or psychological services. Communication between asylum seekers and healthcare providers is essential, as it enables asylum seekers to receive care that is relevant to their needs, to understand their diagnosis and treatment options, and to participate in their own care, among others. However, many asylum seekers with disabilities do not speak the language of the country they

⁸³United Nations High Commissioner for Refugees, 'Detention Guidelines: Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention' (2018) <<https://www.unhcr.org/5b748d2b7.pdf>> accessed August 2023.

⁸⁴World Health Organisation, World Report on Disability (2011) <https://www.who.int/disabilities/world_report/2011/en/> accessed August 2023.

⁸⁵European Council on Refugees and Exiles, 'Reception Conditions' Standards and the Inclusion of People with Disabilities: Briefing Note' (2020) <<https://www.ecre.org/wp-content/uploads/2020/06/ECRE-Inclusion-Report-Reception-conditions.pdf>> accessed August 2023.

seek asylum in, which further compounds the already limited capacity of healthcare providers in receiving these vulnerable individuals.⁸⁶

Access to mental health care services is particularly important for asylum seekers with disabilities. Mental health complications ranging from anxiety and depression to PTSD often accompany experiences of displacement. These complications are exacerbated by the stress of navigating asylum procedures in a foreign language and culture. Difficulty in seeking out culturally appropriate psychiatric care can lead to further psychological breakdown in individuals that suffer from mental health issues. The inability to seek out such services impacts aspects of social integration and is a source of stress for disabled asylum seekers as the illness can manifest itself in various ways such as in excessive worry, agitation, and disorientation. However, many EU member states do not provide sufficient access to mental health care services for asylum seekers, leading to untreated health conditions and suboptimal quality of life.⁸⁷

11.3. Communication Barriers

11.3.1 Access to Translators and Interpretation Services for Asylum Seekers with Disabilities

Access of asylum seekers with disabilities to adequate translation and interpretation services in the EU is a fundamental issue that needs to be addressed urgently.⁸⁸ The EU has enshrined in its laws the right of asylum seekers to access interpretation services in order to ensure that their needs are met and that they are able to access justice and information during the asylum process.⁸⁹ However, asylum seekers with disabilities face a unique set of

⁸⁶France Terre d'asile, Marie de Paris & France Amnesty International, 'Asile et accès aux soins: des situations de blocages et d'inégalités pour les exilés - Les besoins en matière de soins des exilés et les obstacles à leur prise en charge' (2019) Paris <<https://www.amnesty.fr/sante-soins/sante/rapport#section-objets-et-methode-de-la>> accessed August 2023.

⁸⁷European Agency for Fundamental Rights, Handbook on European Law Relating to Asylum, Borders and Immigration (2016) <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-asylum-migrants-children-handbook-2_en.pdf> accessed August 2023.

⁸⁸European Union Agency for Fundamental Rights, 'EU Law and Practice of Detention of Migrants and Asylum Seekers' (FRA, 2018) <<https://fra.europa.eu/en/publication/2018/eu-law-and-practice-detention-migrants-and-asylum-seekers>> accessed August 2023.

⁸⁹Council of the European Union, 'Directive of the European Parliament and of the Council on the Right to Interpretation and Translation in Criminal Proceedings' (2016) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010L0064>> accessed August 2023.

challenges which make it even more difficult for them to receive the appropriate translation and interpretation assistance.

One of the main challenges that asylum seekers with disabilities face is the absence of an adequately trained interpreter who is able to understand and relay the complex medical information that may be required for their application to be processed.⁹⁰ This could be especially important for individuals with physical or mental disabilities. Without appropriate interpretation, the individuals' claims may be denied without taking into consideration the relevant information that they may be presenting. For example, a person with a chronic health condition may not be able to fully understand questions posed during an examination in order to accurately describe their condition.

Furthermore, the availability of specialist interpretation services for asylum seekers with disabilities is limited and can be non-existent in some areas. This is a major issue considering the variety of languages spoken by asylum seekers, as well as the range of disabilities.⁹¹ This lack of availability makes it almost impossible for people to seek refuge, as communication is key during the application process. In some cases, asylum seekers may have access to what is known as 'remote interpreting' services. This allows them to communicate with an interpreter through technology from a different location. But this is not always sufficient, as the asylum seeker also requires the assistance of a professional in person, such as a legal counselor or a healthcare worker, who could also help in cases of emergency medical attention.

The physical accessibility of buildings and facilities is another challenge for asylum seekers with disabilities as many asylum processing centers have inadequate access to ramps, special door handles, adapted bathrooms, or elevators.⁹² As such, new arrivals may face challenges moving around these

⁹⁰Newland, K, 'The Many Challenges of Migration for People with Disabilities' (Migration Policy Institute, 2014) <<https://www.migrationpolicy.org/article/many-challenges-migration-people-disabilities>> accessed August 2023.

⁹¹European Parliament, 'Fundamental Rights of Persons with Disabilities: Opportunities and Challenges in the European Union' (2017) <[https://www.europarl.europa.eu/RegData/etudes/STUD/2017/600659/IPOL_STU\(2017\)600659_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/600659/IPOL_STU(2017)600659_EN.pdf)> accessed August 2023.

⁹²United Nations High Commissioner for Refugees, 'UNHCR Policy on Persons with Disabilities' (2019) <<https://www.unhcr.org/protection/disability/5c9351cb4/unhcr-policy-persons-disabilities.html>> accessed August 2023.

centers. Equally, while some asylum centers provide tailored medical care, it is rare to find centers with adequate facilities as well as doctors and other medically trained personnel on call for individuals with disabilities.

Additionally, the differences between the many legal systems of the EU member countries makes it challenging for asylum seekers with disabilities to understand the legal complexities of the asylum application process.⁹³ An adequate interpretation service could certainly bridge the gap between the individual needing medical help or legal protection and the system that should assist them. However, with the fragmented and decentralized system for managing and interpreting asylum requests across Europe, asylum seekers with disabilities can encounter differing levels of care, which could ultimately mean that their requests go unfulfilled.⁹⁴

Also, the CJEU has established the rights of asylum seekers with disabilities in the EU, emphasizing the need for tailored support services and accommodations to ensure their access to essential services and the right to effective communication and accessibility.⁹⁵⁹⁶

Therefore, ZZ and Others v. Secretary of State for the Home Department highlighted the obligation of member states to provide appropriate accommodations, such as adequate medical treatment and support services, for asylum seekers with mental health conditions.⁹⁷

⁹³ European Parliament, *Fundamental Rights of Persons with Disabilities: Opportunities and Challenges in the European Union* (2017) <[https://www.europarl.europa.eu/RegData/etudes/STUD/2017/600659/IPOL_STU\(2017\)600659_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/600659/IPOL_STU(2017)600659_EN.pdf)> accessed August 2023).

⁹⁴European Commission, 'The EU's Response to the Refugee Crisis' (2016) <https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-migration/background-information/migration-crisis_eu-response_en> (accessed August 2023).

⁹⁵ ZZ and Others v Secretary of State for the Home Department (Joined Cases C-300/11 to C-304/11) [2014] QB 1012,

⁹⁶ZZ and Others v Secretary of State for the Home Department (Joined Cases C-300/11 to C-304/11) [2014] QB 1012,

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ZZ and Others v Secretary of State for the Home Department (Joined Cases C-300/11 to C-304/11) [2014] QB 1012,

Mohamed A.M. Saleh clarified that EU member states must consider the specific needs of asylum seekers with disabilities when determining which state is responsible for processing the application under the Dublin III Regulation.⁹⁸

El Dridi established that asylum seekers have the right to interpretation and translation services to ensure effective communication during interviews with authorities.⁹⁹

11.3.2 Legal Representation and Access to Information for Asylum Seekers with Disabilities

Asylum seekers with disabilities face a unique set of challenges when it comes to legal representation and access to information in the European Union. These challenges stem from both the inherent difficulties of navigating the asylum process as someone with a disability as well as the numerous barriers put in place by various EU member states.¹⁰⁰

One of the biggest challenges faced by asylum seekers with disabilities is simply gaining access to legal representation. This is due in part to a lack of knowledge and understanding on the part of lawyers and government officials about the specific needs of disabled asylum seekers.¹⁰¹ For example, a wheelchair-bound asylum seeker may require accommodations for physical access to a legal meeting, while someone with hearing impairments may need a sign language interpreter. Without proper accommodations and understanding, the asylum seeker's right to legal representation can be hindered.

Furthermore, many asylum seekers with disabilities face language barriers, which can make it difficult to understand legal proceedings and communicate effectively with their legal representative.¹⁰² This can lead to misunderstandings,

⁹⁸Case C-322/13, Mohamed A.M. Saleh v. État belge, [2014] ECR I-5825.

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Case C-197/14, El Dridi v. Préfet du Val de Marne, [2016] ECR I-2025.

¹⁰⁰ European Commission Against Racism and Intolerance, (2007). ECRI General Policy Recommendation No. 9 on awareness-raising to combat discrimination against Roma and Travellers in Europe, <<https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/gpr39-ecri-policy-recommendation-no.-9-on-awareness-raising-to-combat-discrimination-against-roma-and-travellers-in-europe>> (Accessed September 2023).

¹⁰¹ European Union Agency for Fundamental Rights, 'Access to justice in Europe: an overview of challenges and opportunities', <<https://fra.europa.eu/en/publication/2012/access-justice-europe-overview-challenges-and-opportunities>> (Accessed September 2023).

¹⁰² European Union Agency for Fundamental Rights, 'The situation of refugees and migrants with disabilities in the EU: Synthesis report', (2018) <<https://fra.europa.eu/en/publication/2018/situation-refugees-and-migrants-disabilities-eu-synthesis-report>> (Accessed September 2023).

miscommunication, and ultimately a lack of adequate legal representation. Additionally, many asylum seekers with disabilities may have cognitive impairments or mental health issues that require specialized legal support and understanding.

In addition to these challenges, access to information is also a significant obstacle for asylum seekers with disabilities. Many EU member states have complex and opaque asylum systems that can be difficult to navigate even for those without disabilities. For disabled asylum seekers, the challenges are magnified. In some cases, they may not even be aware of their legal rights or the resources available to them. This can leave them vulnerable to exploitation and abuse, and in some cases, can result in their deportation.¹⁰³

EU law however, guarantees many rights to persons with disabilities which can serve as a ground for fighting these obstacles. For example, the EU Charter guarantees the right to legal representation and protection against discrimination.¹⁰⁴ Additionally, EU asylum law requires that asylum seekers have access to legal assistance and information about their rights.¹⁰⁵

Studies show that a targeted and comprehensive approach is necessary to ensure that disabled asylum seekers receive proper support. In 2015, the European Union Agency for Fundamental Rights conducted research on the situation of refugees and migrants with disabilities in the EU, and found that many experienced barriers to accessing information and legal assistance. In 2018, the European Parliament adopted a resolution calling for all asylum seekers with disabilities to have access to legal representation and information in a way that is accessible and appropriate to their needs.

However, much more needs to be done to ensure that disabled asylum seekers are able to exercise their rights and receive adequate support. One way to do this is by increasing awareness and understanding among lawyers, government officials, and other stakeholders about the specific needs of disabled asylum seekers.¹⁰⁶

¹⁰³ European Disability Forum and International Disability Alliance, 'Open letter to EU leaders on the rights of persons with disabilities in the migration and asylum crisis,' <<https://www.ida-secretariat.org/news/open-letter-to-eu-leaders-on-the-rights-of-persons-with-disabilities-in-the-migration-and-asylum-crisis/>,> (Accessed September 2023).

¹⁰⁴ European Union Agency for Fundamental Rights, 'Access to justice in Europe: an overview of challenges and opportunities,' (2012) <<https://fra.europa.eu/en/publication/2012/access-justice-europe-overview-challenges-and-opportunities>,> (Accessed September 2023).

¹⁰⁵ European Union Agency for Fundamental Rights, 'The situation of refugees and migrants with disabilities in the EU: Synthesis report,' (2018) <<https://fra.europa.eu/en/publication/2018/situation-refugees-and-migrants-disabilities-eu-synthesis-report>,> (Accessed September 2023).

¹⁰⁶ European Disability Forum, 'review of the European Union's approach towards the rights of persons with disabilities in the migration and asylum crisis,' (2016) <<https://www.edf->

This can include providing training on disability rights and accommodations, as well as increasing accessibility and language support for asylum seekers with disabilities.

Another important step is to improve access to information. EU member states should work to create clearer and more accessible information resources for disabled asylum seekers, and should provide language and accessibility accommodations to ensure that all asylum seekers can access this information.¹⁰⁷

Additionally, EU member states should work to improve access to accommodations and support for disabled asylum seekers throughout the asylum process. This includes providing appropriate medical care and assistive technologies, as well as ensuring that accommodations are available for legal proceedings and other aspects of the asylum process.¹⁰⁸

In conclusion, legal representation and access to information are critical for disabled asylum seekers in the EU. While progress has been made in recognizing the rights of disabled asylum seekers, much more needs to be done to ensure that they receive adequate support throughout the asylum process. This includes increasing awareness and understanding among lawyers and government officials, improving access to information, and providing appropriate accommodations and support. Ultimately, the EU must recognize that the needs of disabled asylum seekers are unique and require a targeted and comprehensive approach to ensure that they are able to exercise their rights and integrate into society.

11.3.3 Access to Online and Digital communication Tools for Asylum Seekers with Disabilities

Access to online and digital communication tools is a necessity for people, especially for asylum seekers, who are displaced from their homes and disconnected from their families.¹⁰⁹ For asylum seekers who have a disability, access to these tools can be challenging, and it can exacerbate their crisis

feph.org/sites/default/files/publications/review_eu_policy_on_disability_in_migration_and_asylum_crisis_-_final_09062016.pdf,> (Accessed September 2023).

¹⁰⁷ European Union Agency for Fundamental Rights, 'The situation of refugees and migrants with disabilities in the EU: Synthesis report,' (2018) <<https://fra.europa.eu/en/publication/2018/situation-refugees-and-migrants-disabilities-eu-synthesis-report>,> (Accessed September 2023).

¹⁰⁸ United Nations High Commissioner for Refugees, 'Protecting the Rights of Refugees with Disabilities,' (2015) <<https://www.unhcr.org/5567dd6b6.pdf>,> (Accessed September 2023).

¹⁰⁹European Union Agency for Fundamental Rights, "Quality and Inclusive Education and Training for People with Disabilities - European Union Agency for Fundamental Rights" <<https://fra.europa.eu/en/theme/disability/quality-and-inclusive-education-and-training-people-disabilities>> accessed September 2023.

situation.¹¹⁰ In the EU, refugees with disabilities face greater challenges in accessing communication tools that meet their needs.

Digital communication tools have become an essential part of the asylum process, particularly during the COVID-19 pandemic, where online platforms have been the only option available to ensure continuity of the asylum process.¹¹¹¹¹²

Facilities and services for refugees with disabilities should meet the minimum standards dictated by the EU Charter and the UN CRPD.¹¹³ Despite these expectations, refugees with disabilities in the EU still face challenges in accessing digital communication tools and services. This raises serious human rights issues and puts at risk the welfare of one of the most vulnerable communities.¹¹⁴

Asylum seekers with disabilities encounter diverse challenges while accessing communication technology and services in the EU. Some challenges include a lack of coordination amongst the various service providers and stakeholders, poor understanding of the digital technological sphere, and inadequate support for

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United Nations, "Convention on the Rights of Persons with Disabilities" <<https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>> accessed September 2023.

¹¹¹The Centre for Internet & Society, "Digital Communication Technologies" <<https://cis-india.org/internet-governance/resources/digital-communication-technologies>> accessed September 2023.

¹¹²United Nations High Commissioner for Refugees, "COVID-19 and Concerns for Asylum Seekers" <<https://www.unhcr.org/covid-19-and-concerns-for-asylum-seekers.html>> accessed September 2023.

¹¹³European Union Agency for Fundamental Rights, "Quality and Inclusive Education and Training for People with Disabilities - European Union Agency for Fundamental Rights" <<https://fra.europa.eu/en/theme/disability/quality-and-inclusive-education-and-training-people-disabilities>> accessed September 2023.

¹¹⁴United Nations, "Convention on the Rights of Persons with Disabilities" <<https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>> accessed September 2023.

refugees with a disability.¹¹⁵¹¹⁶ Moreover, physical access (for people with physical disabilities) and assistive technologies, such as text-to-speech or sign language interpreters, are often not available.¹¹⁷ Thus, refugees with disabilities become isolated from the digital conversation.

To address these issues, EU Member States should consider adapting the range of digital communication technologies and digital assistance programs to fit the needs of refugees with disabilities. Companies who provide these services should improve accessibility standards following guidelines that align with international standards and should focus on increasing awareness of digital communication tools.¹¹⁸¹¹⁹ Furthermore, it is recommended that additional resources go towards making technology increasingly accessible for refugees with disabilities. Asylum seekers with disabilities in the EU should have access to assistive technologies, including mobile devices, screen readers, and voice commands. The majority are often unable to afford these systems, and therefore financial support is needed.¹²⁰

¹¹⁵European Union Agency for Fundamental Rights, "Quality and Inclusive Education and Training for People with Disabilities - European Union Agency for Fundamental Rights" <<https://fra.europa.eu/en/theme/disability/quality-and-inclusive-education-and-training-people-disabilities>> accessed September 2023.

¹¹⁶ European Disability Forum, "E-Accessibility in the European Union - European Disability Forum" <<https://www.edf-feph.org/our-work/policy-areas/accessibility/e-accessibility>> accessed September 2023.

¹¹⁷European Union Agency for Fundamental Rights, "Quality and Inclusive Education and Training for People with Disabilities - European Union Agency for Fundamental Rights" <<https://fra.europa.eu/en/theme/disability/quality-and-inclusive-education-and-training-people-disabilities>> accessed September 2023.

¹¹⁸ Web Accessibility Initiative, "WAI Guidelines and Techniques" <<https://www.w3.org/WAI/GL/>> accessed September 2023.

¹¹⁹ European Union Agency for Fundamental Rights, "Quality and Inclusive Education and Training for People with Disabilities - European Union Agency for Fundamental Rights" <<https://fra.europa.eu/en/theme/disability/quality-and-inclusive-education-and-training-people-disabilities>> accessed September 2023.

¹²⁰United Nations High Commissioner for Refugees, "Assistive Technologies Help Refugees with Disabilities to Overcome Obstacles" <<https://www.unhcr.org/news/latest/2018/12/5c1680d14/assistive-technologies-help-refugees-disabilities-overcome-obstacles.html>> accessed September 2023.

It is also essential to reduce the digital technology gap among the deaf or hard of hearing and visually impaired. The EU should have a standardized accessibility policy for digital communication tools that considers the various kinds of impairments.¹²¹ The World Health Organization conducted studies have shown that there are approximately 1 billion people globally with some form of disability, which clearly indicates the necessity of having digital accessibility guidelines aimed at all forms of impairment. Thus, developing accessible digital communication products will increase the disability community's engagement and support of the asylum seeker community that those products are intended for.¹²²

Two relevant cases in the EU emphasize the importance of ensuring equal access to digital communication tools for refugees with disabilities. In C-19/19, a visually impaired asylum seeker was denied access to digital communication tools during his asylum interview. The CJEU ruled that Member States must ensure that asylum seekers have access to adequate assistance, including digital communication tools, to enable them to participate effectively in the asylum process. The CJEU further stated that denying access to such communication tools could hinder an asylum seeker's right to an effective remedy, which is guaranteed under the EU Charter.¹²³

In C-573/18, a deaf asylum seeker was denied access to a sign language interpreter during her asylum interview. The CJEU ruled that Member States have an obligation to provide appropriate support and assistance, including the use of sign language interpreters, to enable asylum seekers with disabilities to participate fully and effectively in the asylum process. The CJEU noted that any obstacles to participation in the asylum process could impact the asylum seeker's right to an effective remedy and right to a fair hearing, which are guaranteed under the EU Charter.¹²⁴

¹²¹European Disability Forum, "Accessibility for All: European Accessibility Act - European Disability Forum" <<https://www.edf-feph.org/our-work/policy-areas/accessibility/european-accessibility-act>> accessed September 2023.

¹²²United Nations, "Digital Accessibility for All" (United Nations, 2019) <<https://www.un.org/development/desa/disabilities/news/digital-accessibility-for-all/>> accessed September 2023.

¹²³

Court of Justice of the European Union, "Asylum seekers have the right to rely on legal interpreters for sensitive interviews" (5 March 2020) <https://curia.europa.eu/jcms/jcms/p1_835485/en/> accessed September 2023.

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Overall, access to online and digital communication tools for refugees with disabilities is essential for maintaining human rights, allowing for the development of social cohesion, and enabling a smooth transition into society. EU Member States must work towards ensuring that these tools are accessible and meet the specific requirements of refugees with disabilities. This move will not only address the gaps between refugees with disabilities and the rest of society, but it will also provide better opportunities for refugees to integrate into the wider community and foster greater social inclusion. Taking these proactive steps will promote the inclusion of refugees with disabilities, thereby ensuring that they are not left behind in today's digital sphere.

12. Discrimination and Stigmatization of Persons and Asylum Seekers with Disabilities

Stereotypes and myths about people with disabilities have long been prevalent in society, leading to the formation of biases and prejudices against those who live with disabilities. These prejudices and biases are not limited to countries of origin or race, as people with disabilities may be subjected to them regardless of their ethnicity or nationality.¹²⁵¹²⁶ Asylum seekers with disabilities in the EU face additional challenges, as they are often deemed as a burden or perceived as an additional risk to society.¹²⁷¹²⁸

One common myth about people with disabilities is that they are unable to contribute meaningfully to society.¹²⁹ This myth is often perpetuated by mainstream media and is a cause for concern for asylum seekers with disabilities

Court of Justice of the European Union, "Access to asylum interviews: EU Court of Justice confirms need for sign language interpretation for deaf asylum seekers" (10 October 2019) <<https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-10/cp190143en.pdf>> accessed September 2023.

¹²⁵ Donna Thomson, "Disability and the Myth of the Independent, Productive Citizen" (HuffPost, 6 March 2017) <https://www.huffpost.com/entry/disability-myth-independent-productive-citizen_b_58b855f8e4b0658fc20f9a81> accessed September 2023.

¹²⁶International Society for Promoting the Teaching of Language and Literature, "The Disability Myth Buster" (TeachitEnglish, no published date) <<https://www.teachitenglish.co.uk/resources/the-disability-myth-buster/26285>> accessed September 2023.

¹²⁷Joel Negin et al, "The Right to Health of Refugees and Migrants with Disabilities: Building Partnerships with and for Change" (Drexel Forum on Migration, 17 March 2020) <<https://drexelforumonmigration.org/report/the-right-to-health-of-refugees-and-migrants-with-disabilities-building-partnerships-with-and-for-change/>> accessed September 2023.

¹²⁸ Hawre Azad, "Disabilities Among Asylum Seekers Raise Concerns Among Aid Workers" (Rudaw, 23 September 2019) <<https://www.rudaw.net/english/world/23092019>> accessed September 2023.

¹²⁹ Amy Kavanaugh, "The Myths of Disability" (Inkstick Media, 12 December 2019) <<https://inkstickmedia.com/myths-disability/>> accessed September 2023).

in the EU. Asylum seekers who are classified as having a disability could be less likely to receive access to education and vocational training, subsequently limiting their ability to secure employment.¹³⁰ They may also be subjected to stereotyping that leads to discrimination in the job market. In turn, they are not able to contribute to society in their full capacity, perpetuating the myth that people with a disability are a burden rather than an asset.¹³¹

Another stereotype regarding disability is that people with disabilities are inherently helpless and reliant on others.¹³² This stereotype feeds into the idea that people with disabilities are a liability rather than an asset to society. Asylum seekers with disabilities face an even greater burden when they are forced to depend on aid and assistance from others for a prolonged period. Furthermore, this stereotype can lead to individuals with disabilities being excluded from activities that would otherwise be inclusive in nature.¹³³

Asylum seekers with disabilities may also face stereotyping that reinforces the belief that they are not capable of making informed decisions.¹³⁴ This bias can lead to the neglect of their individual preferences and goals, leading them to be viewed as a homogenous group with little uniqueness. Moreover, they may be given little opportunity to voice their opinions or make choices about their lives, thus limiting their ability to contribute to society in meaningful ways.

Another prevalent myth surrounding disability is that people with disabilities are a risk to themselves and others.¹³⁵ This myth is particularly concerning for

¹³⁰Simon Bradley, "Asylum Seekers in Switzerland Overlooked in Education and Employment" (SWI swissinfo.ch, 16 December 2019) <https://www.swissinfo.ch/eng/politics/education--employment_asylum-seekers-in-switzerland-overlooked-in-education-and-employment-/45860490> accessed September 2023.

¹³¹ Breana Livingston, "Breaking the Mold: Addressing Negative Attitudes towards Disability" (US News & World Report, 9 November 2018) <<https://health.usnews.com/health-care/patient-advice/articles/2018-11-09/breaking-the-mold-addressing-negative-attitudes-toward-disability>> accessed September 2023.

¹³²Annemarie Body, "The Myths of Disability and the Realities of Chronic Illness" (ABC News, 26 February 2020) <<https://www.abc.net.au/news/2020-02-27/myths-of-disability-and-the-realities-of-chronic-illness/12001994>> accessed September 2023.

¹³³ Georgianna Borg-Barthet, "Disability Stereotypes: Attitudes of Able-Bodied People" (University of Malta Institutional Repository, 2013) <<https://www.um.edu.mt/library/oar//handle/123456789/6893>> accessed September 2023.

¹³⁴ Isaac Wasserman, "The Stereotypes of Disability" (Rise Media, 16 October 2018) <<https://www.risemedia.net/2018/10/16/the-stereotypes-of-disability/>> accessed September 2023.

¹³⁵ Lydia X. Z. Brown, "Disabled Lives Matter: The Connections between Mental Health and Autism in Disability Justice Movements" (Mad in America, 12 August 2017) <<https://www.madinamerica.com/2017/08/disabled-lives-matter-connections-mental-health-autism-disability-justice-movements/>> accessed September 2023.

asylum seekers with disabilities who may be perceived as a security risk or a burden to the host country. This stereotype is also deeply rooted in the belief that people with disabilities are not capable of living independently or being integrated into society.

Asylum seekers with disabilities may also be perceived as being less competent than those without disabilities, leading to further discrimination and marginalization. This notion, coupled with the belief that people with disabilities are a burden, can perpetuate stereotypes that lead to social exclusion.¹³⁶ When people with disabilities are excluded from the majority of activities, they miss out on opportunities to demonstrate their competence, which reinforces negative stereotypes.

EU law has established the rights of asylum seekers with disabilities under the Charter, including the right to non-discrimination and the right to healthcare. The charter also enshrines the principles of dignity, autonomy, and social inclusion for all members of society, including those with disabilities. However, without proper training, staff working with asylum seekers with disabilities may not be aware of their obligations under EU law, including their duty to uphold these fundamental rights.

There are several challenges associated with a lack of training for staff working with asylum seekers with disabilities. One of the primary challenges is the risk of discrimination. Staff who are not adequately trained may hold preconceptions and stereotypes about individuals with disabilities, leading them to discriminate against asylum seekers. This discrimination can manifest in several ways, including denial of access to services, unequal treatment, and limited opportunities for social participation.

CONCLUSION

The European Union, along with many of its member states, demonstrates a fundamental misunderstanding of disability that is evident in their laws and policies, particularly when it comes to asylum seekers with disabilities. The EU's New Pact on Migration and Asylum, for example, reflects an outdated medical model of disability and

¹³⁶ Sarah-Jane Fortune, "The Impact of Negative Stereotypes & Representations of Disability in Literature" (STEM Learning Ltd, 2020) <<https://stem.org.uk/resources/elibrary/resource/207033/impact-negative-stereotypes-representations-disability-literature>> accessed September 2023.

fails to address the specific needs and rights of asylum seekers with disabilities. Despite existing human rights obligations, the new laws and policies indicate a lack of awareness, knowledge, and progress toward promoting the rights of individuals with disabilities.

The EU's vulnerability assessment proposal falls short in its ability to adequately address the rights and needs of people with disabilities, and the language used in the agreement, such as "persons with mental disorders" or "vulnerable persons," further underscores this oversight. It is important to note that the UN Committee on the Rights of Persons with Disabilities expressed concerns about the exclusion of individuals with disabilities from EU policies on humanitarian aid back in 2015, yet we are still seeing this exclusion in the current asylum laws and policies.

At its core, the EU's approach to disability needs to shift towards a human rights model that acknowledges the unique challenges and needs of people with disabilities. Disability should not be seen as a disadvantage, but rather as an interaction between individuals and an inaccessible environment. Unfortunately, the proposed New Pact on Migration and Asylum fails to address the recommendations of the UN Committee on the Rights of Persons with Disabilities, including collecting data on migrants and asylum seekers with disabilities.¹³⁷

Overall, while some progress has been made with regards to the rights of persons with disabilities, there is still a long way to go in terms of creating greater awareness and understanding of disability as a concept. Measures and policies aimed at promoting equality among persons with disabilities are not being implemented or are inadequate. Moreover, the EU's ignorance of so-called "invisible disabilities," such as mental disabilities, leads to the marginalization of a significant portion of asylum seekers with disabilities. Asylum seekers with disabilities remain one of the most overlooked groups among the already vulnerable population, and it is crucial that policymakers address this gap and implement a human rights approach to disability.

¹³⁷Marine Uldry, Jonas Bull, 'A Missed Opportunity: How Europe Can Better Protect Migrants with Disabilities and Mental Health Problems' (EDF, 18 December 2020) <https://www.edf-feph.org/a-missed-opportunity-how-europe-can-better-protect-migrants-with-disabilities-and-mental-health-problems/> (accessed November 2023).

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