

Greek report on Disability Discrimination Law in the Field of Employment.

Nikos Gavalas*

1. Introduction.

1.1. Law Making Bodies and Procedure.

Greece is a parliamentary Republic¹. Popular Sovereignty is the foundation of government, whereas all powers derive from the People and exist for the People and the Nation².

Pursuant to the relevant constitutional provisions,³ the main Law making Bodies in the Greek Legal Order are: The Parliament [η Βουλή των Ελλήνων], the President of the Republic [ο Πρόεδρος της Δημοκρατίας] acting on a governmental proposal, the Government [η Κυβέρνηση], the Social Partners [οι Κοινωνικοί Εταίροι] (concluding collective labour agreements in employment matters), and the so called “*Independent Authorities*” [Ανεξάρτητες Αρχές] (competent only in specific matters).

The right to introduce Bills [Νομοθετική Πρωτοβουλία] (right of initiative) belongs to the Parliament and Government⁴

1.1.1. The Parliament.

Every Bill [Νομοσχέδιο], accompanied by an *explanatory report*⁵ [εισηγητική έκθεση], is introduced for debate and if accepted (passed), by Parliament, the President of the Republic shall *promulgate* and *publish* it as a statute⁶ [Νόμος] (or act of Parliament)

The explanatory reports and the minutes of the Parliamentary debates are quite often referred to as a valuable assistance for the interpretation and application of the law.

In most cases, bills are, prior to their introduction to the Parliament, referred to a *Scientific Research Service to the Parliament* [επιστημονική υπηρεσία της

* Dr of Law, Assistant Professor / Democritus University, Thrace Greece. - Attorney/ Supreme Court, Athens. Read fonts are used to specify provisions and regulations of the new antidiscrimination Bill, as it is currently pending for debate at the Parliament (Status: 13 May 2004).

¹ Constitution, Article 1.1. Greece is not a Federal State.

² Constitution, Article 1.2, 1.3.

³ The 1975 Constitution (the first democratic constitution after the fall of the military dictatorship), was revised in 1986 and lately in 2001.

⁴ Article 73.1. of the Constitution. Individual Members of the Parliament have the right to introduce a Bill, but this only rarely occurs.

⁵ Constitution, Article 74

⁶ Statutes are then published in the Official Gazette.

Βουλής], which has been established under the Constitution⁷, to assist Parliament in its legislative work.

Moreover, bills, if considered of major importance in the area of industrial relations, social security and the Government's overall economic and social policy, are referred to a special *Economic and Social Committee*, which gives a non-binding comprehensive opinion on the content of the bill⁸.

1.1.2. The President of the Republic acting on the proposal of a Minister.

The President promulgates and publishes the statutes and issues the decrees necessary for their execution⁹.

If specially delegated by a statute and upon the motion of the competent minister¹⁰, the President can issue *general regulatory decrees* [κανονιστικά διατάγματα].¹¹ These decrees (*Presidential Decrees*, as they are termed in practice) have the force of a statute.¹²

The Government uses this *delegated presidential competence* quite often, as they can pass new legislation in a speedier and simpler way compared to the passing of a statute by Parliament, involving complex procedures and debates¹³.

1.1.3. The Government.

All Ministers have the right to issue regulatory acts (usually termed: Ministerial Decisions [υπουργικές αποφάσεις] by virtue of a statutory delegation in cases concerning regulation of specific matters or matters of local interest or of technical and detailed nature¹⁴.

Ministers (including the Employment and Social Affairs Ministers¹⁵) are making wide use of this right.

1.1.4. The Social partners.

Specific employment and partially social security matters, or general employment standards, are widely regulated autonomously by Collective labour Agreements,

⁷ Article 65.5.

⁸ Article 82.3 of the Constitution: “*Matters relating to the establishment, operation and competences of the Economic and Social Committee, the mission of which is the conduct of social dialogue for the overall policy of the Country and especially for the orientations of the economic and social policy, as well as the formulation of opinions on Bills and law proposals referred to it, shall be specified by law*”. The Law in force is **Law 2232/1994** (it was enacted prior to the 2001 Constitutional Revision, but the new Constitution recognized and upgraded the Committee's competences).

⁹ Constitution, Article 42.

¹⁰ No Act of the President shall be valid nor be executed unless countersigned by the competent Minister (Constitution, Article 35)

¹¹ Constitution, Article 43.2.

¹² All decrees of a regulatory nature must be, prior to their entry into force, elaborated by the Supreme Administrative Court [Συμβούλιο της Επικρατείας] (Constitution, article 95.1.d).

¹³ International Conventions, require ratification by a statutory act of Parliament, as foreseen in Article 28.1 of the Constitution.

¹⁴ Constitution article 43.2.

¹⁵ The Labour Department is now (March 2004) called *The Ministry for Employment and Social Solidarity*.

concluded by trade unions and Employers' organizations (or individual big employers).¹⁶ The Social Partners act in National Level (Nation wide CLAs bind all employers and workers, regardless if they are unionized or not), at the branch level (e.g. in the Bank Sector), at occupational level (e.g. Accountants) and at the company level, where they bind all workers of the company, regardless if they are unionized or not

1.1.5. The Independent Authority for the Protection of Personal Data.

Pursuant to Article 9A of the Constitution, all persons have the right to be protected from the collection, processing and use of their personal data as specified by law (currently **Law 2472/1997**). This protection is ensured by an *Independent Authority* [Αρχή Προστασίας Δεδομένων Προσωπικού Χαρακτήρα], which is established and operates under the said Law 2472/1997¹⁷.

This authority, as delegated by the law, is entitled to issue regulative acts on special and technical matters related to the protection of personal data.

1.2. The Law enforcement Bodies.

Under the Constitution the law is enforced by the Courts¹⁸ and nobody can be deprived of the judge assigned to him by law, unless he has agreed to the opposite¹⁹. As a matter of principle therefore, law enforcement bodies other than Courts, may not be established.

In the Greek legal system, the courts are entrusted with the constitutional revision, in the sense that they are in no case obliged to comply with provisions, whose content –as assessed by the case-judge - infringes the constitution²⁰.

However, in respect of employment issues, I could mention three Public Authorities that play a considerable part in the law enforcement environment²¹.

Thus, The Labour Inspectorate [Επιθεώρηση Εργασίας] (a central service to the Ministry of Employment and a monitoring body) performs inspection and control at the workplaces to ensure the proper implementation of legislation, with powers to institute criminal proceedings or impose fines against employers violating the employment legislation. However, its resources are very limited and its staff is mostly poorly trained and they lack expertise.

Much more effective has proved to be a newly established Service, i.e. the Ombudsperson (ο Συνήγορος του Πολίτη), which is an **Independent Authority**, operating under Article 103 of the Constitution and the pertinent **Law 2477/1997**. Citizens in hundreds of cases have invoked the Ombudsman since 1997 (when the

¹⁶ Constitution, article 22.2 and **Law 1876/1990** on free *collective negotiations*.

¹⁷ Pursuant to article 101 A of the Constitution, the members of the independent Authorities shall enjoy personal and operational independence.

¹⁸ Article 87.1: “Justice shall be administered by courts composed of regular judges who shall enjoy functional and personal independence”

¹⁹ Constitution, Article 8.1

²⁰ Article 87.2

²¹ In the gender discrimination issues, there is a quasi enforcement body, The Secretariat of Equality [Γραμματεία Ισότητας], operating under the direct control of the Prime Minister.

law reached the Statute Book) and in many a case, he²² has made the state agencies respect citizens' rights. It should be noted though, that disabled people who have lodged a complaint with this authority, seek to ensure social security or welfare benefits rather than combat discrimination practices affecting them. Finally, The Independent Authority for the Protection of Personal Data [Αρχή Προστασίας Δεδομένων Προσωπικού Χαρακτήρα] has considerable powers regarding revision and implementation of the legal regulations concerning protection of individuals against revealing or illegally processing personal data.²³

2. The legal Framework

It must be noted first of all, that Greece's approach to disability issues, both in the legislation but also as far as awareness of disabled themselves is concerned, cannot be defined as a civil (human) rights approach but rather as a social welfare approach (ensuring special treatment and quotas).

In the Greek Law there is no antidiscrimination legislation in force, neither specific on disability nor general (but covering disability). Moreover, reform proposals or relevant legislation under preparation did not exist **until recently, when (Dec. 2003), the former socialist government, responding to pressures from the EU, proposed a bill to implement the Framework Directive and combat discrimination on Article 13 of the Amsterdam Treaty grounds, other than gender discrimination.**²⁴ The Bill was not submitted to Parliament by Government for Debate, due to the meanwhile promulgated National Elections.

The reason for failure to enact antidiscrimination provisions was obviously related to the fact that disabled people in Greece (and their organizations) traditionally seek to ensure (and lobby for) social security and social welfare benefits and substantial rights rather than procedural antidiscrimination and human rights.²⁵ The fear to lose entitlements prevents the vast majority of disabled individuals from entering the labour market.

As the socialists lost Power, the Bill was not presented to Parliament by Government after the formation of the new Administration. However, 34 Members of the (new) Parliament, belonging to the socialist Opposition, on 13 May 2004, brought this Bill (with very few insignificant modifications) to the Parliament, in application of Article 73.1 of the Constitution. No information is available as to when the Bill will come to Debate. It is also unknown whether the new Government will bring another Bill.

²² Currently a man.

²³ Article 19 of Law 2472/1997.

²⁴ Bill on the *Application of the Principle of Equal Treatment regardless of racial or ethnic origin, religion or other beliefs, disability, age, or sexual orientation*. The Bill is thus not disability specific but includes disability along with other Article 13 grounds.

²⁵ The human rights discussion in Greece is transferred from Western Europe and remains rather elitist: either purely academic, or just providing a tool for ideological or political activism.

In the normative level, there are many constitutional and other provisions enshrining human rights, indirectly addressing discrimination.

In the **Constitutional area**, I could mention the principles of human dignity²⁶ and free development of personality²⁷, the principle of general equality²⁸, the right of protection of health²⁹, the right to be protected against misuse of personal data³⁰, the right to receive free education on all levels at State educational institutions,³¹ the right to make a family,³² the right to work and to receive equal pay for work of equal value,³³ the right for respect of human and social rights,³⁴ the right to enjoy affirmative measures to counterbalance real inequality³⁵.

All these rights and principles conceptually cover disability and therefore, theoretically, nothing would stand on the way of disabled people – if they ever decided so – to invoke these provisions in many ways and attempt at least to start up a discussion towards promoting social integration and inclusion and combating discrimination against them³⁶. It should be added all the same, that it would be extremely difficult to derive specific enforceable rights out of these general clauses. The necessity for specific antidiscrimination legislation is therefore evident.

But there are also disability specific **constitutional provisions** directly addressing disabled persons: Above all, the very significant new (2001 Revision) stipulation of **article 21.6**, which reads: “**People with disabilities are entitled to benefit from measures ensuring their self-sufficiency, professional integration and participation in the social, economic and political life of the Country**”.

It remains to be seen whether this extremely important and civil rights oriented clause of the recent constitutional revision (however still a general clause), will ever become a key reference point for combating discrimination against disabled people and for raising their awareness towards claiming real equality, non-discrimination and social fairness and inclusion.

With regard to sections 2 and 3 of the same article 21, these constitute – according to case law – the cornerstone of legislation advancing affirmative action for the benefit of disabled persons, i.e. special welfare and social security benefits, price reductions, and last but not least wage subsidies, compulsory placement and employment quotas.

²⁶ Article 2.1.

²⁷ Article 5.1.

²⁸ Article 4.1.

²⁹ Article 5.5.

³⁰ Article 9A.

³¹ Article 16.4.

³² Article 21.1.

³³ Article 22.1.b.

³⁴ Article 25.1.

³⁵ Article 116.2.

³⁶ Especially after the constitutional amendment of article 25, by virtue of which, *the rights of man* also apply to relations between private individuals to which they pertain.

In the **Civil Code**³⁷, there are also certain *open-ended* clauses that could be invoked by disabled persons seeking equal treatment and non-discrimination in their employment life.³⁸ Thus, sections 34 and 35 refer to the legal capacity and the personality of any human being; sections 57 and 59 protect the human personality against any offence, sections 281 and 288 refer to the good faith and to business usages, which have helped the courts to construct a wide protection network against discriminating practises by the employer or unfair dismissal.³⁹ Section 662 establishes a *general duty to care* by the employer and its duty to proceed to such arrangements in premises in which work is carried out as are necessary to protect the life and health of the workers. Finally, sections 931 and 932 protect from physical injuries and health harm.

As regards **criminal law**, there are no provisions outlawing discrimination practice⁴⁰.

Law 2430/1996 places an obvious emphasis on the civil rights model of the disabled people's rights. Thus, s.1.2 demands the Confederation of Disabled Persons to submit annually to the President of the Parliament a report on how the human and social rights of the disabled persons are dealt with in Greece⁴¹. In s.3 Greece adopts the World Action Programme as well as the Equal Opportunities rules for Disabled People, as adopted by the General Assembly of the United Nations in 1993. The law also provides for the establishment of a Special Committee to be entrusted with the drafting of a National Implementation Programme, to implement the stipulations of the World Action Programme and the Equal Opportunities Rules.

Yet, up to the present moment, neither the Committee has been established, nor the National Implementation Programme has been drafted.

Therefore, the law, remains voice crying in the wilderness.

Law 2643/1998 is the central legislation on the employment of disabled persons. This law constitutes the current legislation on the Compulsory Placement and the quota system⁴².

In 1998 also, **Law 2646** was passed. This law provides for the establishment of a “*national System for Community care.*” The law seeks to cover the needs of disabled people through social partnerships. Its main emphasis is placed on the

³⁷ Introduced in 1945

³⁸ These clauses can be certainly invoked directly against employers and not only via interpretation of other provisions.

³⁹ N. Gavalas, The termination of the employment contract in comparative and Greek labour law – a comparative analysis of German, French, English, Italian, Spanish and Greek law. Sakkoulas, 1993 (in Greek).

⁴⁰ But there are criminal laws outlawing discrimination on grounds of racial or ethnic origin (**L. 927/1979 and 1419/1984.**)

⁴¹ The Confederation does submit such reports, but the emphasis is placed rather on social than on human rights, antidiscrimination or social inclusion

⁴² Analysis is attempted in the next chapter.

so-called open care, aiming at deinstitutionalizing disabled people. Moreover, section.3 of the Law explicitly provides that the care granted to disabled individuals *inter alia* aims at the timely neutralization of problems associated with social exclusion⁴³.

3. The Normative and Conceptual Framework.

3.1. The Notion of Equality

3.1.1. Under current Law

As already mentioned, equality is constitutionally structured, both as a general principle⁴⁴, and as a specific gender equality principle⁴⁵.

In both cases, only Greeks are covered.⁴⁶

The Judges, as well as academic writers very often focus on an understanding of the Equality Principle as prohibiting both the unequal treatment of equals and also the equal treatment of unequals. In other words, equality is –at least verbally - conceived not only formally (so called *political* equality), but also as a *differentiating* (=asymmetric) equality.

All the same, this rhetoric, does not always lead the Courts to draw the corresponding conclusions in all cases involved⁴⁷.

Yet, with respect to the existing legislation aiming at dismantling of systemic obstacles, or at motivating employers to provide reasonable accommodation (affirmative action measures), the judges have not upheld the employers' submissions that the Principle of Equality prohibits the implementation of such legislative measures.^{48 49}

As there is no disability specific antidiscrimination legislation (nor case law) in the Greek Legal System, it would make no sense to proceed to analyzing cases/situations deemed equal or unequal by the Courts.⁵⁰

⁴³ I could get no information from the disability organizations on the effectiveness of this law. It appears that this organizations are hostile towards attempts to shifting the legislative approach from welfare to civil rights attitudes.

⁴⁴ See above Art. 4.1 of the Constitution.

⁴⁵ See above Art. 4.2 of the Constitution.

⁴⁶ However, Law 1414/1984 on Gender Equality in Employment makes no discrimination against foreigners and covers all workers without any distinction whatsoever.

⁴⁷ Recent example: the *Thlimmenos* case, EcourtHR 6 April 2000.

⁴⁸ See below, Laws 2643/1998 and Ministerial Decision 30339/2002.

⁴⁹ The Constitutions itself, following an 2001 Amendment, stipulates that the adoption of positive measures for promoting equality... does not constitute discrimination... (See above, the text of Article 116.2. Compare also Article 21.3 of the Constitution).

⁵⁰ It would be interesting to analyze antidiscrimination cases in the Gender field, but this would come out of the scope of this report.

It should be added in this context, that Constitutional provisions (usually extremely broad and *open*), protect the citizens against unequal treatment or discrimination by state entities but not by employers operating in the private sector⁵¹.

Conclusion: The Constitutional Principle of Equality, as understood and applied in the Greek Legal Environment, is practically unable to provide a tool to combat discriminations against disabled people in employment⁵².

3.1.2. Under the new Bill.

The Bill defines the concept of *equal treatment* in Article 2(1), more or less in the same terms as the Framework Directive. Thus:

“For the purposes of this Law, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1”⁵³

3.2. The notion of Discrimination.

3.2.1. under current law.

3.2.1.1 In our Constitution, the only provision, which explicitly prohibits discriminations, is Article 5.2.⁵⁴ However, this Article does not cover disability.

3.2.1.2. Likewise, Greece is bound by Article 14 of the European Human Rights Convention, as well as by many other similar international clauses, but

⁵¹ Very recently (2001), a constitutional amendment has brought a real revolution at this point, by establishing that individual and social rights also apply horizontally, i.e. can be invoked against private employers. It remains to be seen how the Judges will interpret and apply this principle.

⁵² E.g. as late as until 1979, the employment of disabled people in the public sector was prohibited, despite the normative force of the equality principle, initially introduced in the Constitution of 1952. Interestingly, the same principle had proved absolutely impotent with regard to combating gender discrimination. Only three decades after the establishment of the equality principle by the 1952 Constitution, namely in 1984, specific legislation (**L. 1414/1984**), in conjunction with a constitutional amendment in 1975 (see above Article 4.2), could bring gender equality and repeal all gender discriminating provisions. This law prohibits employers from discriminating against people on gender grounds, as regards recruiting, promotion and other aspects of employment.

Also, it is characteristic to note that the Equality principle has never stopped the Courts (save in 2 or 3 cases), from upholding legislation discriminating against manual (blue collar) workers, entitled to receive much lower severance payments than non-manual (white collar).

⁵³ That is, racial or ethnic origin, religion or belief, disability, age, sexual orientation. The May 2004 version of the Bill includes a new Para (4), providing that *any violation of the Principle of Equal Treatment is prohibited*.

⁵⁴ *All persons living within the Greek territory shall enjoy full protection of their life, honour and liberty irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided by international law. The extradition of aliens prosecuted for their action as freedom-fighters shall be prohibited.*

there is no case law prohibiting discrimination against disabled people based thereon.

3.2.1.3. In the employment field, the Courts traditionally prohibit any discrimination⁵⁵ by employers against employees **in general**. They base his prohibition on the Civil Code open-ended clause of *good faith* and *good usages*.⁵⁶ Recently, the Courts also invoke the General Principle of Equality enshrined in Article 4.1. Of the Constitution. Therefore, employers are obligated to treat their employees equally and avoid any *arbitrary discrimination* (principle of equal treatment).

3.2.1.4. Although, the Principle of Equal Treatment conceptually covers disabled people, I know no case, where a disabled person has invoked this principle to claim equal treatment and non-discrimination.

Thus, we do not know whether the Courts will uphold indirect antidiscrimination practices from employers against disabled individuals.

3.2.1.5. In the context of discrimination, a relevant provision is that of Article 5.2 of **Law 2348/1998**, on the *Compulsory Employment of Disabled People* (Quota System), which stipulates that all placed employees should be treated in an equal manner compared to other workers of the enterprise and that they should not be discriminated against.

But I could find no case law applying this provision so far.

3.2.1.6. As regards concepts such as *indirect discrimination*, *failure to provide a reasonable accommodation*, *harassment*, *instruction to discriminate* and the like, they are completely irrelevant in the Greek Legal Landscape, both in legislation, but also in legal literature and case law.

3.2.1.7. Likewise, trade unions, Disabled persons' Organizations and other NGOs show very limited (if at all) interest in promoting subjects such as the above⁵⁷.

3.2.2. Under the new Bill

The draft proposal provides, in its Article 7 a definition of both direct (a) and indirect (b) discrimination, but it does make available two defences for the employer:

Direct Discrimination

Article 7 (1) (a): "Regarding discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, (a) direct discrimination shall be taken to occur where one person is, **in an illegitimate or unjustified way**, treated less favourably than another is, has been or would be treated in a comparable situation". (Emphasis added).

⁵⁵ Mostly with regard to remuneration.

⁵⁶ See above Article 288 of the Greek Civil Code.

⁵⁷ Disabled People in Greece are hardly aware of the fact that these rights should be perceived as their fundamental human rights.

It is worth noting that under the Bill a defence (restriction) is allowed (unfavourable treatment not in every case, but *in an illegitimate or unjustified way*), which is not tolerated in the Directive, with respect to the definition of direct discrimination. It should be added, that the Bill does not specify when the unfavourable treatment can be legitimate and justified.

Indirect Discrimination.

Article 7 (1) (b): “*Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons. There will be no illegitimate indirect discrimination, when that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or when disabled persons are concerned with regard to measures taken in favour of them in compliance with Article 10 of the present Bill and Article 21.6 of the Constitution*”.

We see from the above Article that two defences are allowed, as in the Directive:

- i) Defence when indirect discrimination is objectively required and
- ii) Defence when the Employer acts in compliance with national obligations of “reasonable accommodation” and “positive action”, under Article 7 (1) (b):”

Harassment is a form of discrimination under Article 2 (2):

“Harassment shall be a form of discrimination, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment shall be defined in accordance with the good usages”.

Instruction to discriminate is also discrimination, under Article 2 (3)

“An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination”

3.3. The notion of reasonable accommodation.

3.4.

3.3.1. under current law.

3.3.1.1. Although there seems to be no cases where disabled people invoke their rights to be provided with accommodation (reasonable or not)⁵⁸, in the

⁵⁸ Therefore, the problem of *failure to provide accommodation* has not been dealt with in the case law so far.

conceptual and normative level, employers have the legal duty to provide such accommodation. This duty derives from the general (open-ended) clause of Article 662 of the Civil Code (so called *duty to care*⁵⁹). It could also be supported by many provisions of **Law 1568/1985** on *Health and Safety at Work*⁶⁰. However, this law has not been activated as yet in its relevant provisions, mainly due to failure of the enterprises to hire *work doctors and safety technicians*.

- 3.3.1.2. In practice, much importance is attached to the provision of **article 8.2 of L.2643/1998**, which subsidizes the employers to help them provide accommodation to disabled workers compulsorily placed. It should be emphasized though, that this provision can not be invoked by the disabled themselves and also that it covers a very small part of the disabled workers, as it applies only to those compulsorily placed⁶¹ but not to those recruited freely in the labour market. Moreover, accommodation in the above context means no more than *ergonomic adjustments in the workplace*.
- 3.3.1.3. No legal provision defines the concept of “accommodation”.
- 3.3.1.4. It is obvious (based on the above facts), that the notions of *reasonable*, or *disproportionate burden* are absent from the legal debate.
- 3.3.1.5. The duty to provide accommodation, on the basis of the Civil Code Clause (*duty to care*) does not go beyond *the essential functions of the job*.
- 3.3.1.6. As far as I could collect information, the subject of provision by the employer of reasonable accommodation to disabled workers, is not in the agenda of trade unions.

3.3.2. Under the Bill

In the field of **Reasonable Accommodation**, the Bill has literally adopted Article 5 of the Framework Directive: Thus, Article 10 provides:

“Reasonable accommodation for disabled persons. In order to guarantee compliance with the principle of equal treatment towards persons with disabilities, the employers shall take all appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy”.

3.4. The Notion of Positive Action.

⁵⁹ The *duty to care* is not disability specific. It covers all employees employed by the same employer.

⁶⁰ Mainly articles 9e, 10b, 17, 18, 19, 20 and 21.

⁶¹ It is estimated, (accurate statistical data fail), that the compulsorily placed do not exceed 1% of all disabled workers.

3.4.1. under Current Law.

3.4.1.1. The adoption of positive measures for promoting equality is an obligation imposed upon the State, by virtue of the provision of article 116.2 of the Constitution (2001 Revision).

The provision, in conjunction with Article 21.3 and 21.6 (2001 amendment) of the Constitution, is perceived as guaranteeing the principle of *proportional equality* (*αρχή της αναλογικής ισότητας*) and assisting to the elimination of inequalities actually existing.

3.4.1.2. In the employment field, the principle of positive action is materialized by **Law 2643/1998** on the *Compulsory Placement of special groups of workers*⁶². This Law obligates employers employing 50 workers or more⁶³, to take on disabled workers placed by the Public Authority⁶⁴. The law gives disabled people first priority over all other protected special groups (chiefly persons with many children – 4 or more) in the public sector⁶⁵ and second priority in the private sector.

An employer can escape their obligations under the Law, only if they prove bad economic performance over the last two years. Otherwise, they have to accept placements in a set percentage of 3-4 % of their total workforce⁶⁶

In order to be eligible for placement a disabled person must:

- Prove that he/she suffers from a physical, mental or psychological chronic disease or impairment, at a severity of 50 %⁶⁷ or more,⁶⁸ due to which, his/her chances in the free labour market are limited.
- Be between 21 and 45 years of age⁶⁹.
- Be registered with the Manpower Organization (OAED) in a special register for *unemployed Disabled People*⁷⁰ (Μητρώο ανέργων αναπήρων).

⁶² This law is new. It was introduced and enacted in 1998, but the first appointments started in the beginning of 2000. This Law replaced **Law 1648/1986**, which had revised quota arrangements and had extended the quota system to the private sector. Further, the quota system was revised by **L. 3096/1991** and amended in 1994.

⁶³ Such enterprises are considered very big in Greece and there are few of them (mainly public enterprises, such as electricity or water supply enterprises and the like). 80% of the Greek enterprises employ less than 10 workers.

⁶⁴ The Law is certainly not an antidiscrimination law, but it is widely understood as a reintegration law.

⁶⁵ In the public sector and local authorities, a considerable proportion of vacancies (up to 80%), is reserved for disabled individuals in special occupations, such as messengers, night watchmen, cleaners and receptionists.

⁶⁶ The quota system was introduced after World War II and initially covered only war disabled. **Law 1648/1986** extended quota arrangements to the so-called *persons with special needs* (the term is now widely used to describe disabled people) and obligated private employers to recruit disabled people on the basis of a quota system. This law was replaced in 1998 by Law 2643, now in force.

⁶⁷ The severity degree is measured in a percentage following the medical model.

⁶⁸ He/she must be provided with a medical attest to be issued by a state Medical Committee.

⁶⁹ Age discrimination is widely practiced in Greece notwithstanding the equality principle of Article 4.1. of the Constitution.

⁷⁰ This is a big disincentive, as disabled people hesitate to register due to the still live social stigmatization. Many families conceal their disabled members. Therefore the OAED register by no

- Prove that he/she does not receive a monthly pension over a certain ceiling⁷¹. As vacant places are far less than demand, specific tests are applied for selection and recruitment, mainly age, severity of disability, qualifications, personal status and economic conditions.

It goes without saying, that an extremely limited number of disabled people are placed following the above procedure⁷².

3.4.1.3.. The Manpower Organization (OAED), based on a ministerial Decision issued annually⁷³, is implementing a programme, which shows a bigger impact in getting people with disabilities to work in private sector enterprises (only). It offers wage subsidies to employers hiring registered disabled people⁷⁴ over a maximum period of three years, which is a substantial length of time. This programme is considered to have been successful. No doubt, it offers incentives to employers to hire disabled individuals; however the subsidized posts are limited compared to the total numbers of disabled seeking jobs, or willing to enter or reenter the labour market.⁷⁵

3.4.2. Under the Bill.

Here again, The Bill has copied the Directive. Article 12 (under the heading: Positive Action and Special Measures) of the Bill provides:

(1)“The principle of equal treatment shall not prevent from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds referred to above”⁷⁶

(2)“With regard to disabled persons, the principle of equal treatment shall be without prejudice to measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment”.

The drafters of the bill seem to consider that the health and safety measures might constitute part of the positive action mechanism.

means gives an accurate picture of the real number of disabled people willing to compete in the labour market.

⁷¹ Currently ca 500 Euro.

⁷² It is estimated, (accurate statistical data fail, mainly due to strong reactions from disability organizations, trying to avoid the stigma, associated with disability), that the compulsorily placed do not exceed 1% of all disabled workers, the total number of which certainly exceeds 10% (Greece has a very high rate of road accidents).

⁷³ Currently No 30339/22. April 2002, of the Minister of Labour and Social Affairs

⁷⁴ Regardless their age, or income. But they must prove a disability at a severity of 50% or more.

⁷⁵ The system mainly applies to disabled individuals willing to work in inferior jobs at a very low remuneration.

⁷⁶ That is, racial or ethnic origin, religion or beliefs, sexual orientation, age or disability

3.5. The Treatment of Medical Examinations under Current Law.

- 3.5.1. Compulsorily placed workers under Law 2643/2002, are prior to placement examined by a state medical committee as already mentioned. This committee's findings are *sensible personal data* under **Law 2472/97 on the protection of personal data**, and are not notified to the employer.
- 3.5.2. No disabled worker is obligated to reveal his or her disability before recruitment by a private employer. If asked, he/she can refuse to answer or even lie, provided that his/her disability does not constitute an obstacle in performing the work agreed upon.
- 3.5.3. In some cases, e.g. hotel or restaurant jobs, workers have to submit a medical attest certifying that they are not suffering from an infectious disease.
- 3.5.4. In the public sector, all employees have to submit a detailed medical attest before recruitment. However, eventual disability findings do not impede recruitment, provided that disability does not render them inappropriate to perform their duties⁷⁷. Under the said **Law 2472/97** it is prohibited to the Public Service to process or notify the findings of the Medical Committee with regard to any personal data, including disability.

The new Bill is absolutely silent with regard to medical testing.

3.6. The Defenses available under current law.

3.6.1. Exceptions to the Equality norm are not defined in the Greek legislation. The Courts would accept exceptions only in cases, where they find that discrimination is not arbitrary, or that the application of formal equality would cause substantial inequality (positive action, see above).

3.6.2. On the subject of disability discrimination, Greek Law, as previously stated, is silent. It is therefore evident that concepts such as indirect discrimination, failure to provide accommodation, genuine and determining occupational requirements and the like, are not discussed, questioned or claimed.

3.6.3. With regard to the system of compulsory placement (Quotas), Employers are given little leeway in avoiding the obligations imposed. They cannot refuse to take on the compulsorily placed disabled persons, unless they invoke and prove an exceptionally bad economic situation prevailing in their enterprise over the last two years.⁷⁸

3.7. The Defenses available under the Bill.

⁷⁷ Section 7.1 and 7.2 of the Civil Servants Code (Law 2683/1999).

⁷⁸ A special state committee decides the placement. Unwilling employers can lodge an appeal, but in the vast majority of cases, these are decided in favour of the beneficiary disabled person.

As mentioned above, the Bill provides one defense in the case of direct discrimination and two defenses with regard to indirect discrimination⁷⁹.

4. Personal and material scope of current law

4.1. Definition of “person with a Disability.”

4.1.2. Under current law.

Law 2643/1998 (compulsory placement and quota system), defines a person with disability (coming under the scope of the Law) in the following terms:

A person with limited possibilities to find work, due to a chronic bodily, mental or psychological disease or impairment (person with special needs⁸⁰), provided that his/her disability reaches a severity of 50% and is registered with the Manpower Organization (OAED) in a special register for unemployed disabled People.

In view of the above definition:

- The disability must both reach a threshold of severity and limit a person’s normal range of life activities before it counts under the law⁸¹.
- Therefore, the definition views disability as the function of an interaction between the person and his/her environment.
- Reversible and temporary impairments are not included.
- Past or future disabilities are not included.
- Perceived disability is not included.
- Under social security, the definition of disability differs in the sense, that the focus is placed mainly on the inability of the person to follow his or her normal range of life.
- Persons with disabilities, who receive social security benefits that reach a certain threshold, are not entitled to the protection of law 2643/1998.

4.1.3. Under the Bill.

The Bill, as the Framework Directive, is silent as to a definition of Disability. This is positive compared with the Quota Law 2643/1998, which provides a very restrictive definition of disability, mainly based on the medical test⁸².

⁷⁹ Supra 3.2.2.

⁸⁰ In the 80ies, emphasis in the terminology shifted from a person’s disability (άτομα με αναπηρίες) to a person’s special needs (άτομα με ειδικές ανάγκες). This term was first used in Law 1648/1986 (and further adopted by Law 2643/1998, currently in force).

⁸¹ Although the latter is not understood per se, but rather in the sense that a disabled person at a 50% severity level anyhow suffers limitations in the free labour market.

⁸² “A person with limited possibilities to find work, due to a chronic bodily, mental or psychological disease or impairment (person with special needs), provided that his/her disability reaches a severity of 50% and is registered with the Manpower Organization (OAED) in a special register for unemployed disabled People”.

But it is also negative, as past, or future, or imputed disability or disfigurements etc are not covered.
Persons associated with persons with disabilities are not covered.

4.2. Definition of Employment, Occupation, Training, etc under current law.

In Greece, sheltered workshops are run by NGOs, Parent Organizations etc. and operate in an informal manner⁸³.

As regards vocational training, this task is currently entrusted to the Manpower Organization (OAED). A Law enacted in 2001 however⁸⁴, established a new agency (named Organization for Vocational Training), which, inter alia will now be responsible for the occupational training of disabled people.

The prohibition of discrimination against disabled people ([failing specific antidiscrimination legislation] based on open-ended constitutional and civil code clauses, as stated above) is mainly addressed to employers, but peer-workers, providers, clients etc. can also be addresses, by virtue of the principle of the employer's *duty to care* (article 662 of the Civil Code).

Employers or Providers of vocational training are entitled to be informed whether a person has a disability, only if such disability affects the provision of work or the receivability of training or is linked with an infectious disease etc.

4.3. The scope of the new Bill.

As to the **Scope**, the Bill, adopts, in its Article 4 quasi literally, Article 3 of The Framework Directive:

*1. Without prejudice to paragraphs 2 of this article, and to Article 5⁸⁵, the principle of equal treatment, as established in this law, shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:
(a) conditions for access to employment and occupation in general⁸⁶, including selection criteria and recruitment conditions, whatever the branch*

⁸³ From 1987, many law provisions have attempted an institutionalization of workshops specifically for disabled people. However the attempt proved unsuccessful, due to lack of coordination between the government agencies involved. A 1998 Law (**2646/1998** on the *Development of a National Network for Social Care*) was expected to help overcome the difficulties of the past and give the notion of sheltered workshops a new chance. Yet, 4 years after the enactment of the law, the expectations have not come true.

⁸⁴ **Law 2956/2001**

⁸⁵ On professional requirements.

⁸⁶ Self employment is not included in the Bill.

of activity and at all levels of the professional hierarchy, as well as the terms of professional growth including promotion;
(b) access to all types and to all levels of vocational guidance, vocational training, and retraining, including practical work experience;
(c) employment and working conditions, including dismissals and pay;
(d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.
2. *This Law does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.*
3. *This Law does not apply to payments of any kind made by state schemes or similar, including state social security or social protection schemes.*
4. *This Law, in so far as it relates to discrimination on the grounds of special needs⁸⁷ and age, shall not apply to the armed forces.*

The Bill also allows the following **exemptions (defences)**, which are modelled on the text of the Framework Directive:

Professional requirements [Article 9 (1)]

1. *“Notwithstanding Articles 2 Para 1 and 7 Para 1, a difference of treatment which is based on a characteristic related to any of the grounds referred to above⁸⁸, shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate”⁸⁹*

The Democratic Society exemption [Article 7 (2)]

“This Law shall be without prejudice to measures which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others”.

The Health an Safety Defence [Article 12 (2)]

⁸⁷ Sic. (emphasis added). The phrase *special needs*, obviously refers to disability. (In Greece, disabled people are usually referred to as *persons with special needs*).

⁸⁸ That is, racial or ethnic origin, religion or beliefs, sexual orientation, age or disability

⁸⁹ The proviso: *“that the objective is legitimate”* of the Framework Directive, has been omitted in the text of the initial Proposal, but then added in the submitted Bill.

With regard to disabled persons, the principle of equal treatment shall be without prejudice to the establishment or to maintenance of measures on the protection of health and safety at work or measures aiming at facilitating or maintaining their integration to work or employment.⁹⁰

The new (May 2004) version of the Bill brings in its Article 26 a new Para 3 (amendment), which stipulates, that on the motion of the Minister of Justice a Presidential Decree may be issued, in order to extend the scope of the Bill to fields other than work or employment.

4.4. Vicarious Liability of the Employer for Discrimination and Harassment under current law.

Vicarious liability of an employer towards a disabled employee due to discrimination by third parties can be based on the employer's *duty to care*. Anyway, no case law exists on this topic. The Bill is also silent.

4.5. Remedies, Enforcement and Sanctions against discrimination.

4.4.1. Under current law.

There are no specific remedies, enforcement bodies, burden of proof rules or sanctions against discrimination under current law. This is due to the fact that, as already mentioned, there is no antidiscrimination legislation in force. The application of the said open-ended clauses and principles cannot activate special (i.e. granting more protection than in usual claims) mechanisms or procedures.

Punitive damages (in the form of *reparation of moral prejudice*) can be awarded, only if the prerequisites of Article 57⁹¹ and 59⁹² of the civil code are fulfilled.

4.5.2. Under the Bill.

⁹⁰ The Drafters of the Bill seem to take the view that the health and safety measures, belong to the Positive Action.

⁹¹ “ Rights attaching to one's own personality. A person who has suffered an unlawful offence to his personality has the right to claim the cessation of such offence and the non-recurrence thereof in the future [...]”

⁹² “Reparation of moral prejudice. In the case referred to in the above article, the Court may, at the request of the person offended and having regard to the nature of the offence, order the person responsible to furnish reparation of the moral prejudice suffered by the person offended. Such reparation consists of the payment of a sum of money, of a publication or of any other measure called for in the circumstances”.

In this field, the Bill has taken a distance from Article 17 of the Directive. The only new (specific) sanction provided in Article 17 of the Bill is a fine between € 150 and 9000 which the employer, in case of failure to apply the equal treatment principle, shall pay to the state and not to the victim. Other sanctions, such as compensation to the victim or other, are not covered by the Bill.

Specialised Bodies for the Promotion of Equal Treatment.

The Bill entrusts three Specialized Administrative Bodies, with the promotion of the Principle of Equal Treatment. These Bodies are:

The “Ombudsperson”

It is an Independent Authority, recognized by the 2001 Constitutional Revision. The Ombudsperson becomes competent under the Bill [Article 20 (1)], with regard to the promotion of the Equal Treatment Principle in the public sector only, drafting reports and making investigations upon complaints for violation of the Principle (par. 3 of the above Article 20) (in any field ; not only in occupation and employment).

The Equal Treatment Committee

This Committee is established under the Bill (Article 21) and is placed under the Minister of Justice. Its competence (Article 22. paras 1,2 and 3) will cover any field with the exception of public sector and employment and occupation. Therefore, it will examine complaints for violation of the Equal Treatment Principle in its field of competence and will try to conciliate the conflicting Parties. The Committee has no authority to inflict sanctions of any kind.

The Work Inspectorate.

This Body, is, under Article 19 (3) of the Bill, active only in the private sector and in the field of employment and occupation. The Work Inspectorate will be acting as conciliator between employer and employee and they can also impose fines (payable to the State and not to the Employee), in case of a finding of violation of the Equal Treatment Principle⁹³.

It should be noted however that this body is fully governmental, therefore not an independent body and its mandate is very narrow.

The Bill **incriminates** (in its Article 16) any violation of the Non Discrimination Principle, but only in the fields of racial or ethnic discrimination or religious beliefs and only with regard to provision of

⁹³ The fine can then be challenged before an administrative court. But the litigation is not between employer and employee but between employer and the Government.

goods or services to the Public. Discrimination in the field of disability is not a criminal offence.