

## **PROPOSED DECLARATION OF THE SÍNDIC DE GREUGES DE CATALUNYA (CATALAN OMBUDSMAN) ON THE INTERNATIONAL DAY OF DISABLED PERSONS**

**DECEMBER 3, 2007**

### **PREAMBLE**

#### **The Síndic de Greuges de Catalunya (Catalan Ombudsman),**

Acknowledging the rights of persons referred to in the Universal Declaration of Human Rights, the Charter of Fundamental Rights of the European Union and other international instruments;

Acknowledging the importance of the *UN Convention on the Rights of Persons with Disabilities* proclaimed in 2006 by the Organization of the United Nations with the objective of promoting, protecting and ensuring that all persons with disabilities may fully enjoy, in conditions of equality, all human rights and fundamental freedoms, and that they be respected in their dignity;

Acknowledging the rights of children with disabilities as taken up in the Convention on the Rights of the Child, and especially, the “best interest of the child” principle.

Bearing in mind, among others, the following:

- Article 13 of the Treaty establishing a Constitution for Europe (on non-discrimination for reasons of gender, racial or ethnic origin, religion or beliefs, disability, age or sexual orientation),
- Article 21 of the Charter of Fundamental Rights of the European Union (which prohibits discrimination on diverse grounds),
- UN General Assembly Resolution A/RES/48/96 (on Standard Rules on the Equalization of Opportunities for Persons with Disabilities),
- Directive 2000/78/EC of 27 November (establishing a general framework for equal treatment in employment and occupation, and prohibiting discrimination for reasons of religion, beliefs, disability, age or any other nature),
- the European legislation on equal treatment and non-discrimination that protects all persons of the EU,
- the 2005-2010 Social Agenda of the European Commission (which has the priority, among others, of promoting equal opportunities to achieve a more integrating and inclusive society from the social point of view);

Bearing in mind the *Malaga Ministerial Declaration on People with Disabilities: "Progressing towards full participation as citizens"*, of the second European Conference of Ministers responsible for integration policies for people with disabilities in 2003;

Given the Recommendation Rec(2006)5 of the Committee of Ministers to member states on the *Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015*;

Noting that the Parliament of Catalonia signed the *Charter of Fundamental Rights of Persons with Intellectual Disabilities*, promoted by the Catalan Federation for Persons with Mental Retardation;

Recalling the commitments acquired by the Parliament of Catalonia to meet the challenges presented by persons with disabilities and work to ensure the care they deserve, as acknowledged in its *Institutional Declaration on occasion of the International Day of Disabled Persons, 2005*;

Recalling that 2007 has been declared the *European Year of Equal Opportunities for All: Towards a Just Society* by the Council of the European Union and the European Parliament (decision 771/CE of the European parliament and the Council, of May 17, 2006),

Taking note of the need to fulfil Articles 49 EC (according to which the official authorities must carry out a policy for planning, treatment, rehabilitation and integration of the physically, sensorially and mentally disabled, to whom specialized attention must be given, and who must be especially protected to guarantee the exercise of their rights) and 40.5 EAC (which assigns to public authorities the guaranteeing of legal protection for persons with disabilities, promoting their social, economic and occupational integration, and adopting the measures necessary to provide or complement the support of their direct family environment), which must be the basis of the public policies for the care of this group.

Given that, over the past 15 years, different rules have been approved for the recognition of rights of these persons in Spain, especially:

- Law 13/1982, of 7 April, on the social integration of handicapped persons
- Law 51/2003, of 2 December, on equality of opportunities, non-discrimination and universal accessibility of persons with disabilities
- Law 41/2003, of 18 November, on equity protection for persons with disabilities
- Law 53/2003, of 10 December, on public employment of disabled persons
- Law 39/2006, of 14 December, on the Development of Personal Autonomy and Care for persons in situations of dependence
- 2nd Action Plan for Persons with Disabilities (2003-2007).
- Law 8/1995, of 27 July, on the care and protection of children and adolescents, by which children and adolescents with physical, mental or sensory disabilities are entitled to the care necessary for the proper development of their abilities.

- Organic Law 2/2006 of 3 May, on Education, which for the education of students with special educational needs stipulates the principles of normalization, inclusion, non-discrimination and effective equality.
- Bearing in Mind that the European Network of Ombudspersons for Children, ENOC, in its annual meeting with its members, held in Barcelona from September 18 to 21, issued a statement to governments, regarding children with disabilities, urging the immediate ratification of the UN Convention on the Rights of Persons with Disabilities (approved December 13, 2006), in the states that had not yet done so.

**The Catalan Ombudsman joins in the celebration of the International Day of Disabled Persons, emphasizing that this population group must constitute one of the main points of attention of the official authorities in order to guarantee the enjoyment and exercise of their fundamental rights.**

#### I.

**The Síndic de Greuges de Catalunya (Catalan Ombudsman), wishes to underscore the importance of four lines of action to improve the living conditions of all persons with disabilities and guarantee that they may fully exercise their rights:**

- a. The application of the **principle of equality** in all realms of disabled persons' lives in order to guarantee the equality of conditions and opportunities.
- b. A guarantee of the **right to individual autonomy** as an expression of human dignity and that includes the freedom to make one's own decisions and develop oneself in daily life with the maximum possible independence.
- c. **Conditions of universal accessibility**, in physical spaces (facilities for public usage, furnishings, transport services, etc.) as well as in information and communications, in urban as well as rural areas. The elimination of all types of barriers, and application of principles of universal design and promotion of accessible environments of support for the needs of persons with disabilities that compensate their initial disadvantages.
- d. The guarantee of **conditions of full inclusion, integration and participation of persons with disabilities in society.**

## II.

### **Regarding the situation of persons with disabilities in Spain and specifically, Catalonia,**

According to information from the Ministry of Labour and Social Affairs (1st National Accessibility Plan 2004-2012), in Spain, 9% of the population has some type of disability. In other words, in 2003 there were some 3.5 million persons with disabilities in Spain. According to information from the Catalan Institute of Statistics, in Catalonia, there were a total of 377,527 persons with recognized disabilities.

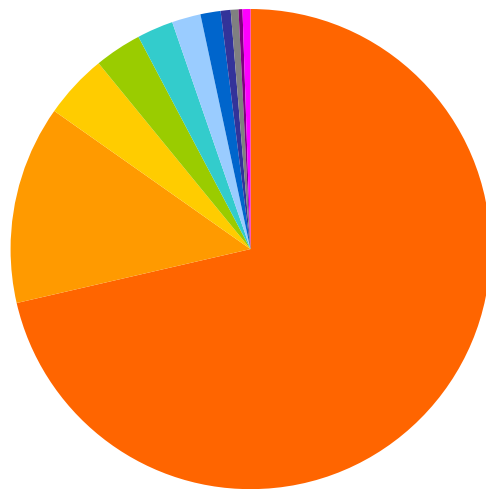
Although on the State and autonomous community level –insofar as their competencies allow– progress has been made toward the full social integration of persons with disabilities, this group is still encountering barriers that impede the exercise of their rights in a full and autonomous manner, and in conditions of equality. Persons with disabilities still face many difficulties related to mobility, access to public spaces, to information and communication, and integration into the job market occupational, among others.

**This situation is constantly perceived from the Síndic de Greuges organization, due to the complaints it receives from persons with disabilities in Catalonia, or their families, who believe their rights have been violated.**

Between 2002 and 2007 (up to October) the Síndic received a total of 759 complaints, which can be considered a reflection of some of the problems that affect persons with disabilities in Catalonia.

#### **Complaints related to persons with disabilities (2002-07)**

■ Social services	542	71.41%
■ Education	101	13.31%
■ Children and adolescent affairs	34	4.48%
■ Public administration	24	3.16%
■ Work and pensions	18	2.37%
■ Taxation	15	1.98%
■ Health care	10	1.32%
■ Consumer affairs	5	0.66%
■ Housing	3	0.40%
■ Territorial planning	3	0.40%
■ Public safety and Justice	3	0.40%
■ Culture and language	1	0.13%
<b>Total</b>	<b>759</b>	<b>100.00%</b>



Source: Síndic de Greuges de Catalunya (Catalan Ombudsman)

As shown in this table, nearly three fourths of the complaints received (71.41%) have to do with social services, followed by those affecting Education (13.31%) and Children and Adolescent Affairs (34%).

As these are the areas in which the most problems have been reported with regard to persons with disabilities, the following subjects are discussed in greater detail:

#### **SOCIAL SERVICES (2002-07)**

<b>Elderly people</b>		
Elderly persons	4	0.74%
<b>Social inclusion</b>		
Aid and subsidies	1	0.18%
Noncontributory pensions	2	0.37%
Minimum income benefits (PIRMI)	1	0.18%
<b>Persons with disabilities</b>		
Adaptation and accessibility	273	50.37%
Aid and subsidies	63	11.62%
Occupational centres and hearing aid centres	7	1.29%
Recognition of degree of disability	90	16.61%
Residential services and day centres	56	10.33%
Adapted transport	26	4.80%
Others	4	0.74%
<b>Others</b>		
Others	15	2.77%
<b>Total</b>	<b>542</b>	<b>100.00%</b>

With regard to the complaints on social services, it is clear that the majority have to do with **adaptation and accessibility** (50.37%) although attention must also be given to those regarding **recognition of the degree of disability** (16.61%) and the **existing forms of financial aid and subsidies** (11.62%).

Logically, in education, the **special educational needs**, for children's and preschool education (36.63%) as well as primary and secondary school (38.61%) are those that have generated the most complaints.

#### **EDUCATION (2002-07)**

<b>Children's and Preschool Education</b>		
Special Educational Needs	37	36.63%
<b>Primary and Secondary Education</b>		
Access to Education	1	0.99%
Infrastructures	2	1.98%
Special Educational Needs	39	38.61%
<b>University Education</b>		
Students	1	0.99%
Academic Management	2	1.98%
<b>Others</b>		
Others	19	18.81%
<b>Total</b>	<b>101</b>	<b>100.00%</b>

#### **CHILDHOOD AND ADOLESCENCE (2002-07)**

<b>Children's services</b>		
Free time, leisure and sport activity education	3	8.82%
Minors' disability problems	8	23.53%
Minors' health problems	1	2.94%
<b>Situations of lack of protection</b>		
Protected residential facilities	1	2.94%
Study and follow-up of vulnerability	1	2.94%
Foster care and adoption processes	1	2.94%
<b>Others</b>		
Others	19	55.88%
<b>Total</b>	<b>34</b>	<b>100.00%</b>

These data make it clear that one of the main difficulties faced by persons with disabilities is mobility, and consequently, their autonomous development in society.

Along these lines, following up on the annual reports of our institution from 2000 on, the Catalan Ombudsman has been consistently calling public administrations' attention to the problems suffered by this group in all aspects of their daily lives.

1. The **accessibility conditions** in the urbanistic, construction, communication and information, education, and other realms are still very distant from the desirable minimums necessary to allow persons with various types of disabilities to develop autonomously in our society. In this regard, special mention must be made of accessibility problems in public transport services, which constitutes a clear mobility barrier for this group. Shortcomings in this realm reveal various breaches of the regulations on accessibility and elimination of barriers by the various levels of public administration.
2. Evidence has shown clear deficiencies in **residential care and specialized resources** for persons with disabilities, especially those who suffer from mental disabilities. The availability of beds for this group is clearly insufficient. This determines the Administration's delay in fulfilling the requests for this service.
3. The excessive **duration of processes** for assessment of situations of disabilities, and prolongation of the relevant periods, often involve restrictions on the access and enjoyment of the available benefits and aid programs and, in general, the exercise of a number of rights they are entitled to in their condition as disabled persons.
4. Problems have been detected in the **guarantee of the rights** of disabled persons. For example, the absence of personal and secret voting rights has been reported by sight-impaired persons. Changes to rectify this situation have not yet been made effective, despite recent legislative reforms.
5. Inconveniences and strictness have been detected **in the accreditation of the person's disabled condition**. For this reason, there is a proposal to create a tool that will facilitate and improve this accreditation, through a card for persons with recognized disabilities.

### III.

Within the framework of the rights of the persons with disabilities, the Catalan Ombudsman also attaches a high priority to the actions taken for development of the rights of children with disabilities.

The Universal Declaration of Human Rights and the Convention on the Rights of the Child acknowledge the need to pay special attention to children's affairs. Specifically, in the ambit of children's affairs and education, the main difficulties reported to this Institution are:

1. **Shortcomings in residential care for adolescents and youth with mental retardation and behaviour disorders**. The lack of sufficient beds generates excessive waiting periods and personal and family situations that can become unsustainable.

2. **Lack of sufficient resources for early care in the realm of mental health.** Children are referred to other services, not always according to their needs but to the available resources.
3. **Difficulties for educational inclusion** of students with disabilities, among others due to planning insufficiencies, in the deployment of Special Educational Support Units (USEE) and in general, due to the lack of resources to make it effective.
4. **Accessibility problems** at certain educational centres and other spaces for children's social participation.
5. **Difficulties in guaranteeing the access to free-time resources** (summer day camps, sport activities, etc.).

#### IV.

##### **Bearing in mind the foregoing background, the Catalan Ombudsman,**

Recalling the recommendations of the *Action Plan of the Council of Europe for the promotion of rights and full participation of persons with disabilities*;

Recalling

- that the social inclusion of the persons with disabilities is everyone's responsibility;
- that society's sensitization toward the reality of disability is one of the keys for progress in policies that respect the diversity that it involves, paying special attention to women with disabilities, to persons who must face multiple disabilities, and the persons most severely affected, and who can not represent themselves.
- that the families of persons with disabilities are an essential element of the social side of disability, and deserve the administration's highest-priority attention;

##### **wishes to call the public administrations' attention to the need to**

1. Promote and reinforce strategies to guarantee the right to equal opportunities for persons with disabilities, and their rights to participation, as a fundamental tool within their democratic integration process;
2. Achieve an accessible and inclusive social environment in all realms (educational, occupational, health, architectural, communication, etc.) as a fundamental element to guarantee the protection of rights and the protection of the persons with disabilities and their families, and of their autonomous development.
3. Strengthen actions geared to the elimination of existing barriers, in order to guarantee accessibility to all spaces in which daily community life occurs.

4. Promote measures aimed at awareness-raising on the need to achieve full integration of persons with disabilities;
5. Involve all local, national and European public authorities in cross-disciplinary actions aimed at improving the quality of life of persons with disabilities and guaranteeing the respect and full exercise of all of their rights.
6. Revise the rules, policies and administrative practices to progress toward an inclusive and plural society that is open to difference and, along these lines, ratify without delay the United Nations Convention on the Rights of Persons with Disabilities and its optional protocol.

As specifically regards children with disabilities the Catalan Ombudsman wishes to call the public administrations' attention to the need to:

1. Promote specific measures to ensure real observance of the right to non-discrimination due to disability in the following areas: a) education from nursery school to university; b) care in the family setting; c) the protection system; and d) access to leisure activities.
2. Recognizing their special needs, and establish mechanisms for their coverage with public resources, while at the same time taking measures to guarantee assessment and/or evaluation of the disabled child's situation, including development of an identification, treatment and follow-up system therein.
3. Establishing mechanisms for proper training and awareness of all those who work with children with disabilities and their fathers and mothers.
4. Establishing the mechanisms necessary to ensure counselling, orientation and accompaniment of the fathers and mothers, the financial aid for the proper upbringing of children with disabilities and the practical assistance necessary for them to exercise their parenthood.
5. Ensuring that when children with disabilities are put into institutions, that it is done with guarantees of quality and is adjusted to their needs.

**The achievement of these measures will make it possible to improve the quality of life of persons with disabilities, raise awareness and sensitivity toward the problems of disability and promote the exercise of human rights by this group.**

Barcelona, December 3, 2007