

# **LAW 38/2004**

**18th August 2004**

**Defines the general bases  
of the legal system for  
prevention, habilitation,  
rehabilitation and  
participation of people  
with disability**



**Editor:** Secretariado Nacional para a Reabilitação e Integração das  
Pessoas com Deficiência

**Local e Data de Edição:** Lisboa, 2005

**Colecção:** Folhetos SNR n.º 53

**ISBN:** 972-9301-89-1

**Montagem e Impressão:** Tipografia Macarlo, Lda.

**Depósito Legal:** 112 318/97

## INTRODUCTION

The advancement of scientific and technological know-how, the support and contribution from the social and political growing participation of people with disability and of their organisations, the increasing concern with regard to social justice and the recognition forwarded by society concerning rights and duties of the overall citizens which one has witnessed along the late decade, are, among other factors, relevant agents showing clearly the need to change the philosophy, the organisation and the action procedures of communities with regard to people with disability with a view to ensuring them an effective improvement of their quality of life.

Towards such end, the changes in the conceptualization of features, policies and practices concerning people with disability are being brought together within international and national guidelines, among which one may stress:

- the Resolutions of the General Assembly, of the Economic and Social Council and of the Commission for Human Rights as well as other instruments adopted by specialized and expertized Agencies (UNESCO, ILO, WHO) within the United Nations scope;
- the Revised Social European Chart, the Resolutions and Recommendations of the Council of Europe;
- the Madrid Declaration of the European Disability Forum;
- the Resolutions, Guidelines, Decisions and Communications of both the Council and of the European Union Commission.

So, there was the demand and the need to draw a new Legal provision which should set the general principles of the policy on prevention, habilitation and participation of people with disability, in the light of these orientations and that should be laid down on the following assumptions:

- the new multidimensional approach on disability underlying the International Classification of Functioning, Disability and Health, adopted in May, 2001, by the WHO, according to which disability is assumed as an interaction process between individual and environmental factors;
- the importance of the recognition by society at large and by the public and private entities in particular of an holistic concept of the human

being, appraising the positive features and the functionality of people with disability within a global perspective on habilitation and not merely rehabilitative, strictly centred on the individuals limitations;

- the society as a whole needs to be accountable for the policies, measures and practices to be adopted, demanding the adequate changes in the environment essential to the fulfilment of full participation and to ensure non discrimination and the effective equality of opportunities of people with disability.

The designation in itself of this Law, laid down on three bearing main axis – prevention, habilitation and participation, achieves and turns its goal more clear.

Prevention, due to the importance of developing efficient measures which hinder or reduce the emerging of primary and secondary disability conditions.

Habilitation, because it is an interaction and active procedure in time between the individual and the environment, where the development of environmental conditions and factors is valued, promoting the functioning of the individual at full length and not only confining itself to interventions of rehabilitative nature individual-centred.

Participation as the ultimate end of the overall habilitation process concerning people with disability, securing the full entitlement to their rights and duties within equality of opportunities such as fulfilled by the rest of all the other citizens.

One may still highlight the fact that according to the transversality of the policy on prevention, habilitation, rehabilitation and participation of people with disability, it may be only sanctioned by a legal provision which sets the basis of the respective juridical scheme, with a view to bounding its further legislative development according to what has been foreseen in article 112 of the Portuguese Republic Constitution.

## PARLIAMENT

### **Law no. 38/2004 dated 18 August** **Defines the general bases of the legal system for prevention, habilitation, rehabilitation and participation of people with disability**

In order to be valid as a general law of the Republic, under the terms of sub-paragraph c) of Article 161 of the Constitution, the Parliament hereby decrees the following:

#### **CHAPTER I** **General provisions**

##### Article 1 **Scope**

This law defines the general bases of the legal system for prevention, habilitation, rehabilitation and participation of people with disability.

##### Article 2 **Concept**

A disability person is considered as being one who, because of loss or irregularity, whether congenital or acquired, of bodily functions or structures, including psychological functions, has specific difficulties that are likely, in combination with environmental factors, to limit or hinder activity and participation under equal conditions with others.

##### Article 3 **Objectives**

The objectives of this law are to constitute an overall policy that is integrated and transversal for the prevention, habilitation, rehabilitation and participation of people with disability in particular by means of:

- a) Promoting equality of opportunity so that people with disability have the facilities to enable full participation in society;

- b) Promoting life-long opportunities for education, training and work;
- c) Promoting access to support services;
- d) Promoting an inclusive society by means of removing barriers and adopting measures aimed at full participation by people with disability.

## **CHAPTER II**

### **Fundamental principles**

#### Article 4

#### **Principle of individuality**

The individuality of persons with disability shall be acknowledged and they should be approached differently, taking account of personal circumstances.

#### Article 5

#### **Principle of citizenship**

The persons with disability have the right of access to all goods and services available in society as well as the right and duty to play an active part in the running of society.

#### Article 6

#### **Principle of non-discrimination**

1 – A person shall not be discriminated against either directly or indirectly, by act or omission, on the basis of his/her disability.

2 – A person with disability should benefit from all measures that take positive action with the aim of ensuring the exercising of his/her rights and duties, correcting the present situation of inequality that persists within society.

#### Article 7

#### **Principle of autonomy**

A person with disability is entitled to take personal decisions relating to the defining and leading of his/her life.

Article 8  
**Principle of information**

A person with disability is entitled to be informed and to receive explanations in relation to his/her rights and duties.

Article 9  
**Principle of participation**

A person with disability has the right and duty to participate in planning, developing and monitoring policies concerning prevention, habilitation, rehabilitation and participation of people with disability.

Article 10  
**Principle of globality**

A person with disability is entitled to the goods and services necessary for his/her lifelong development.

Article 11  
**Principle of Quality**

A person with disability is entitled to have quality of goods and services for prevention, habilitation and rehabilitation, as appropriate for developing skills and personal and social needs.

Article 12  
**Principle of priority of public responsibility**

The State is responsible for creating conditions for the carrying out of a policy of prevention, habilitation, rehabilitation and participation of people with disability.

Article 13  
**Principle of transversality**

The policy of prevention, habilitation, rehabilitation and participation by people with disability should be of a multidisciplinary nature, operating within the different domains in a global and coherent way.

Article 14  
**Principle of cooperation**

The State and other public and private bodies must act in a co-ordinated way and co-operate with one another in implementing the policy for prevention, habilitation, rehabilitation and participation of people with disability.

Article 15  
**Principle of joint responsibility**

All citizens must contribute towards pursuing a policy of prevention, habilitation, rehabilitation and participation of people with disability.

**CHAPTER III**  
**Promotion and development**

Article 16  
**State involvement**

1 – The State is responsible for the promotion and development of the national policy for prevention, habilitation, rehabilitation and participation of people with disability with the co-operation of society as a whole, particularly in respect of the person with disability, their family, the respective representative organisations and local authorities.

2 – The State is responsible for the co-ordination and organisation of sector-specific policies, measures and actions, at the national, regional and local levels.

3 – The State may assign to public and private bodies the promotion and development of the national policy on prevention, habilitation, rehabilitation and participation, particularly organisations that represent people with disability, private and co-operative institutions having social responsibility as well as local authorities.

4 – The State is responsible for carrying out the inspections necessary for compliance with the law.

Article 17  
**Co-ordinating body**

1 – The State must ensure the existence of a public body to collaborate



in defining, co-ordinating and monitoring the national policy on prevention, habilitation, rehabilitation and participation of people with disability.

2 – The body referred to in the previous paragraph must ensure participation by society as a whole, namely organisations that represent people with disability.

#### Article 18

### **Involvement of public and private organisations**

1 – It is the duty of public and private organisations to carry out all actions necessary for promoting the development of the national policy for prevention, habilitation, rehabilitation and participation of people with disability.

2 – The State must support public and private bodies that carry out the acts envisaged in the previous paragraph.

#### Article 19

### **Relationships with non-government organisations**

In pursuing the aims of this law, the State must support actions carried out by society, in particular by organisations representing people with disability.

#### Article 20

### **Social cohesion**

In the carrying out of their activities and with the aim of strengthening social cohesion, private bodies, namely companies, co-operatives, foundations and institutions whether profit-making or not, workers' representative associations and employers' associations must work towards fulfilling the economic, social and cultural interests of people with disability.

#### Article 21

### **Support network for social services and equipment**

The State is responsible for promoting the execution of agreements, namely with local authorities and private and co-operative institutions having social responsibility, with the aim of creating a decentralised support network for social services and facilities for people with disability.

Article 22  
**Support for families**

The State is responsible for adopting measures that provide the families of people with disability with conditions that enable their full participation.

Article 23  
**Voluntary action**

The State is responsible for encouraging voluntary action and joint participation in actions to support people with disability within a framework of freedom and responsibility, taking account of the effective involvement by society in the carrying out of voluntary action within the scope of the policy for prevention, habilitation, rehabilitation and participation of people with disability.

**CHAPTER IV**  
**Prevention, habilitation, rehabilitation and participation**

SECTION I  
**Prevention**

Article 24  
**Prevention**

1 – Prevention consists of measures aimed at avoiding the emergence or aggravation of the disability and eliminating or lessening its consequences.

2 – The State must promote, directly or indirectly, all the actions necessary to make such prevention effective, namely providing information and raising awareness about:

- a) Accessibility;
- b) Accident rates, in particular resulting from road accidents and accidents at work, in the home and during leisure activities;
- c) Consumption of substances that affect the health, in particular alcohol, drugs and tobacco;
- d) Eating habits;
- e) Perinatal, prenatal and postnatal care;
- f) Health, safety and hygiene at work.

## SECTION II

### **Habilitation and rehabilitation**

#### Article 25

### **Habilitation and rehabilitation**

Habilitation and rehabilitation consist of measures within the areas of employment, work and training, consumption, social security, health, housing and town planning, transport, education and teaching, culture and science, the fiscal system, and sport and leisure aimed at learning and the development of aptitudes, independence and the quality of life of people with disability.

#### Article 26

### **Right to employment, work and training**

1 – The State is responsible for adopting specific measures in order to ensure right of access to employment, work, guidance, training, learning and professional rehabilitation and the adaptation of working conditions of people with disability.

2 – In complying with the provisions of the previous paragraph, the State should promote and support resources for self-employment, tele-work part-time work and working from the home.

#### Article 27

### **Reconciling work with family life**

The State is responsible for adopting the specific measures to ensure the right to reconcile work and the family life of people with disability, as well as that of family members caring for a disabled relative.

#### Article 28

### **Employment quotas**

1 – According to their size, companies should contract people with disability by means of a work contract or other forms of employment for a maximum quota of 2% of their workforce.

2 – The provisions of the previous paragraph may be applicable to other employers under regulatory terms.

3 – The Civil Service should contract a quota of at least 5% for people with disability.

Article 29  
**Rights of the consumer**

The State is responsible for adopting specific measures necessary for ensuring the consumer rights of people with disability, namely by setting up a special protection system.

Article 30  
**Right to social security**

The State is responsible for adopting specific measures necessary in order to ensure the social protection of people with disability by means of financial or cash loans aimed at personal autonomy and social and professional integration of people with disability.

Article 31  
**Right to health**

The State is responsible for adopting specific measures necessary to ensure the promotion and monitoring of health, diagnosis, early treatment and the habilitation and medical-occupational rehabilitation of the disabled, as well as providing, adapting, maintaining or renewing the means of adequate compensation.

Article 32  
**Right to housing and town planning**

By means of the drafting of a national plan to promote accessibility that takes account of universal design principles, the State is responsible for adopting:

- a) Specific measures necessary in order to ensure the right to housing for people with disability by means of co-ordination with local authorities;
- b) Specific measures necessary in order to ensure access for people with disability, particularly to indoor and outdoor areas, by means of removing architectural barriers relating to construction, enlargement and renovation.

Article 33  
**Right to transport**

By means of drafting a national plan to promote accessibility, the State is responsible for adopting specific measures in order to ensure access by

people with disability, in particular enabling them to use public transport networks, special means of transport and other appropriate methods of transport, as well as forms of social support.

#### Article 34

### **Right to education and learning**

The State is responsible for adopting specific measures in order to ensure access for people with disability to education and learning in particular by means of allocating appropriate funds and resources for learning and communication.

#### Article 35

### **Right to culture and science**

The State is responsible for adopting specific measures to ensure access by people with disability to culture and science, in particular by means of allocating appropriate funds and resources to enable the removal of existing limitations.

#### Article 36

### **Fiscal system**

The State is responsible for adopting specific measures in order to ensure that people with disability have access to essential goods designed to improve their living conditions, namely by awarding fiscal benefits.

#### Article 37

### **Sponsorship**

The State is responsible for instigating the incentive of sponsorship by means of creating and setting fiscal exemptions.

#### Article 38

### **Right to take part in sporting activities and leisure time activities**

The State is responsible for adopting specific measures in order to ensure access by people with disability to sporting activities and leisure time activities by creating appropriate structures and forms of social support.

Article 39  
**Top class competition**

The State is responsible for adopting specific measures in order to ensure that people with disability can take part in top class sporting competition by creating appropriate structures and forms of social support.

SECTION III  
**Participation**

Article 40  
**Participation**

Participation consists of the specific measures to ensure participation by people with disability or respective representative organisations, particularly in the drafting of legislation on disability, execution and evaluation of the policies mentioned in this law, so as to ensure their involvement in all situations of everyday life and society in general.

CHAPTER V  
**Transversal policies**

Article 41  
**Inheritance statute**

The State is responsible for adopting specific measures in order to ensure that people with disability are protected in relation to inheritance.

Article 42  
**Early intervention**

The State is responsible for carrying out actions in relation to early intervention by means of a set of integrated support measures aimed at children, families and the community, with the aim of providing an immediate response to the needs of children with disability.

Article 43  
**Information**

1 – The State and other public and private bodies must provide information on services, resources and benefits available for people with

disability in an accessible form, particularly in *braille*, large print, audio, sign language or suitable records on computer.

2 – Media organisations must make information available to people with disability in an accessible form as well as contribute to raising public awareness, with the aim of removing discriminatory practices based on disability.

#### Article 44

### **The information society**

By means of drafting a national plan for promoting accessibility, the State is responsible for adopting specific measures to ensure access by people with disability to the information society.

#### Article 45

### **Research**

The State is responsible for promoting and supporting research and development programmes of a multi-disciplinary nature that enable an improvement in means of prevention, habilitation and rehabilitation.

#### Article 46

### **Training**

1 – The State is responsible for promoting and supporting the specific training of professional staff working in the area of prevention, habilitation and rehabilitation for people with disability.

2 – In training programmes, the bodies responsible must ensure, whenever justified, that the content contributes to the process of prevention, training and rehabilitation for the disabled.

#### Article 47

### **Statistics**

The State is responsible for ensuring that statistical data relating to disability is collected, processed and published.

## **CHAPTER VI**

### **Final provisions**

#### Article 48

#### **Support fund**

The law may make provision for the setting up of a support fund for the disabled based on fines resulting from proceedings against contravention of the rights of people with disability.

#### Article 49

#### **Budgets**

The costs arising from the execution of this law must be included in the budgets of the respective ministries.

#### Article 50

#### **Regulations**

The Government must approve the regulations required for the operation of this law.

#### Article 51

#### **Repeal**

Law no. 9/89 of May 2 is hereby repealed.

Passed on 24 June 2004.

The Chairman of the PARLIAMENT, *João Bosco Mota Amaral*

Promulgated on 2 August 2004

To be proclaimed.

The President of the Republic of Portugal, *JORGE SAMPAIO*

Officially recognised on 5 August 2004

The Prime Minister, *Pedro Miguel de Santana Lopes*