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ENO webinar on Institutional care

The use of funds and lessons from the pandemic

15 September 2021

Meeting Report

European Ombudsman **Emily O'Reilly** opened the webinar, welcoming the participants and thanking them for their attendance. She mentioned that the pandemic has made our societal values even clearer, certainly in relation to people that live in institutions who were neglected in many countries and she highlighted the particularly dire situation of elderly people during the pandemic. She stressed the importance of the topic of the webinar, and ensuring that public authorities enable persons with disabilities and older people to fulfil their right to independent living. The EU has committed itself to work towards this goal and allocate funds to projects that promote deinstitutionalisation rather than prolonging institutional care. The European Ombudsman has received recurring complaints about this issue and is carrying out an own initiative inquiry in the topic. Ms O'Reilly encouraged ENO members to contribute to this parallel inquiry.

Ms O'Reilly stressed that the progress that EU countries have made in deinstitutionalisation has been slow and that, during the COVID-19 pandemic, insufficient steps were taken to protect those in institutional care facilities. She also observed that the important work of civil society in shining the spotlight on this issue has been crucial.

A. Presentation about the European Ombudsman's own initiative work on the use of EU funds for promoting the right to independent living

Maria Moustakali, inquiries officer of the European Ombudsman, presented the European Ombudsman's own-initiative inquiry on the use of EU funds for promoting the right to independent living. She gave the example of two complaints that had been filed before the pandemic, one in 2018 and another one in 2019.

- J Case 417/2018/JN on how the Commission dealt with concerns raised about alleged human rights abuses in a social care institution in Hungary that had received EU funding. The inquiry found that the Commission's interpretation of the [UN Convention on the Rights of Persons with Disabilities](#) (UNCRPD) concerning the use of EU funds was at odds with that of the UN Committee as regards the use of funds for refurbishing residential institutions. The Ombudsman invited the Commission to seek to adhere to the greatest extent possible to the UN CRPD Committee's guidance, which indicates that EU funds should not be used to maintain

existing institutions. The Ombudsman also asked the Commission to consider the need to address the lack of an appropriate legal basis for excluding the allocation of EU funds to long-stay residential institutions.

- J) Case 1233/2019/MMO concerned the construction of new institutional care facilities for persons with disabilities in Hungary and Portugal. The Ombudsman pointed out that new building projects cannot obstruct the progress on deinstitutionalisation. Therefore, the Ombudsman invited the Commission to verify from the outset whether projects that receive [European Structural and Investment funds](#) (ESI funds) support the construction of new institutions and to seek to suspend funding when necessary. The Ombudsman also asked the Commission to follow up on the reports drawn up by the relevant experts and to inform the Ombudsman of the latest developments as regards the 2021-2027 programming period.

Ms Moustakali explained that, in both cases, the Commission responded positively. The Commission agreed that to the greatest extent possible, funds should not be used only to maintain institutions but also to support deinstitutionalisation. Moreover, the Commission also accepted the need to monitor the implementation of programmes financed by ESI Funds and to interrupt or suspend payment in case of a breach of law that has an impact on the Union budget. The Commission also emphasised the transition from institutional to community and family-based services in the 2021-2027 programming period.

However, the pandemic has had devastating consequences for persons with disabilities and older people, some of which could have been avoided if there had been greater progress towards deinstitutionalisation.

The European Ombudsman opened an own initiative inquiry and asked the Commission: how it monitors the use of ESI funds; what requirements it applies in order to approve Member States' programmes; and in what circumstances the Commission would initiate an infringement procedure. In its reply, the Commission said that in the coming years EU funds should be used to promote the transition from institutional to community and family-based services, which is part of the enabling conditions provided for by the legislation on the use of EU funds. When the Commission is of the view that an enabling condition is not fulfilled, it will withhold funding until it considers that the enabling condition has been fulfilled. The Commission also added that stakeholders should be involved in the design and implementation of the programmes, and their expertise and inputs should be thoroughly used.

B. Presentations by ENO members

Denisa Kramářová and Petra Hadwiqerová, Office of the Public Defender of Rights, Czech Republic

The presenters began by providing some data about the number of people with disabilities living in an institution in the Czech Republic. The figures show that 71,000 people live in a care institution, amounting to 0.67% of the population. Thus, the topic of deinstitutionalisation is crucial for the country and the Czech Ombudsman's office has conducted its own research on it. The country does not have any deinstitutionalisation strategy, no calculation of its cost or comprehensive data on the topic. Consequently, there is a high risk that additional EU funding will be spent on reorganisation and addition of institutions rather than deinstitutionalisation.

The presentation introduced two cases. The first one was about the town of Vejprty, at the border with Germany, where 1 person out of 10 lives in an institution. In 2020, a fire broke in one of the buildings, which led to loss of lives. The building was reconstructed and the clients returned 3 months after. The presentation outlined some lessons learnt in Vejprty: Czech social services are understaffed and lack the work force to conduct inspections. However, there is ongoing work and towards improving the visiting and inspection system.

The second case presented the example of Liblín, where there is a baroque castle that hosts 137 people with learning disabilities. During the autumn of 2020, there was a COVID-19 outbreak, with 112 residents contracting the virus and 15 fatalities. The lessons drawn from the situation are that the concentration of people increases the risk of transmission of infectious diseases. Following the outbreak, the Ministry of Labour and Social Affairs promised to submit an amendment to the Social Services Act that would allow shifting the focus towards outpatient services, although no action has been taken so far.

Patrícia Fraçoso Martins, National Ombudsman Office, Portugal

Ms Martins began by highlighting the particular attention that the Portuguese Ombudsman has put on the subject of the wellbeing of the elderly and people with disabilities, which has grown considerably in the context of the pandemic. Although the Portuguese Ombudsman does not have direct and specific experience related to the use of European funding to the right to independent living, they have gathered some data on the topic.

Ms Martins shared the experience of the Portuguese Ombudsman dealing with the right to independent living and social security funds. The office received multiple complaints regarding the delay in payments of economic aid and pensions, which led to several initiatives and recommendations by the Ombudsman, particularly directed to the Ministry of Labour. Most cases involved either substantial or procedural issues regarding calculation methods, amounts, delays in payment, conditions or refusals. The pandemic has aggravated these issues as the system has faced an extraordinary pressure. The Ombudsman also noted an increase in calls to the hotlines that it has in place for the elderly and for persons with disabilities. The calls revealed several difficulties that people were facing in the context of the pandemic, such as closure of day centres, difficulty to access health and support services, difficulties in contacting public services, refusals of admissions to care institutions or lack of aid to family members.

The Portuguese Ombudsman's office receives an average of 50 complaints per year on the subject of misuse of EU funds, mostly regarding good administration, accounting duties or payments and reimbursements. She raised a concern regarding the participation of the Ombudsman on monitoring committees, regarding whether its involvement would hinder the independence or jeopardise the mission of the Ombudsman.

Daniel Toda Castán, Office of the Ararteko, Basque Country, Spain

Mr Toda Castán started by explaining how the system for assistance, support and care in Spain is organised. These services are governed by a National Act but they are effectively implemented by the regions. The first step of the system is to analyse the needs of the person individually, which classifies them into one of three dependence categories or degrees. Then an individual care plan is drafted laying out the services the person will require. There are also three benefits to complement the care plan

services: the first is intended as substitute to the public service when the public facilities are full; the second is directed towards people who need a professional carer at home; and the third is meant to provide care at home by family members.

Following that, Mr Toda Castán concretely commented on the situation in the Basque Country. He first provided some data, indicating that there are 79,000 people out of 2.2 million population that are entitled to benefits, from which 65,500 are receiving benefits and services. Regarding the evolution of the service, the report on the strategic plan of the Basque Government shows that places in homes have increased beyond the targets exceeding the forecast. However, in contrast, places in daycare centres and alternative residential institutions decreased and the expenditure in domiciliary assistance and psycho-social intervention was also reduced.

Concerning the perspective of the Ararteko, he mentioned that the most significant conclusion they have drawn from the complaints received and a report on local level social services they carried out in 2016 is that the service of domiciliary assistance shows significant shortcoming and is underfunded and overcrowded. Among others, he mentioned that the waiting time is longer than desired and that the application process is too rigid. The issues are aggravated in rural areas, due to the lack of professionals and difficulty to access facilities. In its report on local services, the Ararteko concluded that the least developed services were preventive action, psychosocial support, assistance for carers and community residential services and called for an improvement in all of them. The Basque Government has agreed that the system needs rethinking and the Ararteko is satisfied with the fact that the Government's assessment of the situation is similar to theirs, and they acknowledge the shortcomings of the service.

Mr Toda Castán highlighted that overall the system relies to a high extent in family members' support, which should be exceptional, and that there is a need to move towards community based care services and institutions that can give more specialised and tailored care. Moreover, he stressed that the availability of care homes is far from sufficient and clients wait for months, often using up their saving before being able to access a care centre. Sometimes, their conditions are aggravated because they do not find a place in a home that is truly prepared for the level of care they need. He concluded by saying that the system is now at a crossroads since there is a need to keep a balance on two sides: improvement of institutions and shifting towards community services and tailored assessment, while catering to economic restrictions.

Discussion on the presentations

Maria Moustakali raised a question regarding whether it is clear for the public and the Ombudsmen offices when a project is funded by the EU. **Vittorio Gasparrini**, Liaison Officer from the Ombudsman of Tuscany, mentioned that most infrastructure projects are visibly marked as funded by the EU, but that it is not the case for the EU funds for deinstitutionalisation. **Patrícia Fragoso Martins** mentioned that, in the case of Portugal, the main issue is not whether there is a legal obligation to publicise the use of EU funds since they are regularly published in the official journals as the laws require. Nevertheless, she pointed out that the Ombudsman's office lacks the resources to monitor the use of EU funds and investigate and answer complaints in this subject, especially because the current context has maximised the number of issues brought to the Ombudsman.

Marta Hirsch-Ziembinska remarked on the contribution of **Patrícia Fragoso Martins** regarding the independence of the Ombudsman concerning their participation in the monitoring committees. **Maria Moustakali** commented that all of the Ombudsman offices that replied to this question in the strategic

inquiry were concerned about their participation being at odds with their independence and their statute.

C. Presentation about how the European Commission monitors EU funds to ensure they are used to promote the right of persons with disabilities and older persons to independent living

Maria-Anna Paraskeva, senior policy officer, European Commission

Ms Paraskeva began by stressing that deinstitutionalisation is a politically sensitive issue in many Member States and that in the past years the European Commission has received complaints from civil society organisations regarding the use of funds in this area. Similarly, UN special rapporteurs have shared their concern in this area, in particular regarding persons with disabilities. Also the European Ombudsman has inquired on the topic. Thus, it is crucial that the topic is discussed and that the shortcomings are analysed and investigated.

Regarding deinstitutionalisation, Ms Paraskeva set out how EU funds were used during the 2014-2020 programming period. She pointed out that building or renovating long-term institutions was excluded in order to encourage a shift to community based and home care. This priority remains in the new programming period, so EU funds should be used to promote a shift towards independent living and social inclusion in line with [article 19 of the UN Convention on the Rights of Persons With Disabilities](#) (UNCRPD). However, she mentioned that, in spite of it being an *ex ante* condition, at the end of the last programming period various Member States had not put in place a deinstitutionalisation strategy.

The use of EU funds to support institutional care is prohibited in the common provisions of the Cohesion Funds as well as in the thematic regulations, particularly the one on [European Social Fund](#). These require Member States to make progress on ensuring independent living arrangements. When additional funding was made available through the [EU Recovery and resilience facility](#), Member States would apply to use the additional funding for social matters, since they could skip the *ex ante* conditionality that the social fund requires. Consequently, many countries' investments have been directed towards long-term facilities, which hinders the goal to shift towards social inclusion and deinstitutionalisation. In light of this context, the Commission issued guidance to internal services on the importance of complying with the prioritisation of deinstitutionalisation and only accepting projects for long-term facilities when these are aimed at broadening the options for potential care recipients.

For the new programming period, the Commission has created a new monitoring tool in the enabling conditions. These are a continuation of *ex ante* conditions mentioned above, with the difference that there is a specific overarching enabling condition related to the need to respect the [EU Charter of Fundamental Rights](#) and the [UNCRPD](#), and that the enabling conditions will be valid throughout the whole period and the Member States could be asked about their strategic plans at any moment. If the enabling conditions are not met, at any point the Commission can suspend the funding.

From the monitoring perspective, the Cohesion Funds, such as the [European Social Fund \(ESF\)](#) and the [ESF+](#), have succeeded in creating partnerships and a new European code of conduct on partnership has been established, aiming to improve the organisation of monitoring committees. In these Committees, it is compulsory to include civil society organisations and other relevant stakeholders. Moreover, it is necessary to consult these committees when assessing the fulfilment of the enabling conditions and the monitoring of the use of funding by the Member States. As the Commission only participates as an observer, Ms Paraskeva stressed that they rely very much on civil society to intervene and provide information about irregularities in the use of the funds through complaints.

Discussion

Maria Moustakali thanked Ms Paraskeva and posed a question regarding the amount of detail of the programmes that the Member States submit and how much information the Commission receives on the projects using EU funds. Ms Paraskeva answered that the information on the programmes is minimal and that most of the information is included in the calls for proposals. In that regard, she stressed the key role that the monitoring committees have as they can discuss and comment on the proposals.

Patrícia Fragoso Martins raised a question regarding the approach to the right to independent living in the case of older people and people with disabilities. She mentioned the context in Portugal, where institutionalisation is a big problem, but that isolation is also a concerning issue. It is not always a straightforward case to reconcile the right to independent living with avoiding isolation, for instance in rural or scarcely populated areas. There should be an effort to define deinstitutionalisation for each group and adapt it to the existing needs and realities. Ms Paraskeva agreed that it is necessary to address the needs of those people needing care in rural areas. She stressed that even if the preferred option is to shift towards deinstitutionalisation, residential care facilities might be the preferred option for some clients, yet that should not be the go-to option for everyone.

Daniel Toda Castán asked Ms Paraskeva a question related to family-based care and its concept, since there is a very diverse idea of this model in different countries. Ms Paraskeva clarified that the idea of home-based care is not about informal carers, usually female family members, but about receiving professional care at the home of the client who can enjoy independent living by staying at their own house. Then, this could be complemented with community-based services for example to avoid isolation.

Maria Moustakali asked if the Commission would consider looking into reports of national ombudsmen referring to cases that reflect how the EU funds are used in this area. Ms Paraskeva agreed that these reports are useful, especially if they would be followed up, yet she regretted that reports of ombudsman offices are not received by her team.

Finally, **Josef Siegele** mentioned the need to include elderly people with limited mobility, who he mentioned are having issues with COVID-19 vaccination and testing certificates and would like to have more accessible and user-friendly apps to access their information.