

Access to Justice

Open mic event on the Rights of Persons with Disabilities
"Human Rights: a reality for all persons with disabilities?"
European United Left/Nordic Green Left European Parliamentary Group
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I am here in this panel as the chairperson of the Swedish member association Law as a Tool for Social Change ("Med lagen som verktyg"). Our mission is to raise awareness of our group's human and civil rights, and to increase our capacity in defending these rights against businesses and government agencies - if necessary in court. Thus, in this panel, my perspective is from the grass-roots level.

Persons with disabilities have many rights on paper. As a previous speaker already pointed out, there is a huge gap between theory and practice. To bridge this gap and turn these rights into reality, to make sure we truly can live independently and be included in the community, on equal terms, we have to work on many fronts. One of these fronts is the legal system. We have to become better in claiming justice.

Access to justice faces obstacles

Filing a complaint in court requires paying court fees which is a threshold for many persons with disabilities.

Also, in many countries, there are no government subsidies to low-income persons for the legal costs involved in taking discrimination cases to court. When losing a case in civil court the losing part pays the winning part's costs, including the lawyers' fees for both parts. People with disabilities and their organizations are seldom rich and can rarely afford to take such risks.

Amounts awarded for discrimination damages are typically small and give convicted offenders hardly any incentives to change their discriminatory policies or practices. Thus, improvements for our group as an outcome are rare. Here, an example. Vanja from the Center for Independent Living in Sofia, Bulgaria sued the City of Sofia for building an inaccessible subway station in her neighborhood. Eventually, with the help of the Center for Independent Living, she won and was awarded the sum of € 200 for damages. For the City of Sofia the most economic strategy is to not adapt or reconstruct the subway station unless hundreds of more persons go to court which will hardly be the case given the costs, work and insufficient payments.

The combined result of the above obstacles to justice

Few persons with disabilities claim their rights in court. Yet the more casework exists, the clearer the requirements set forth by the law, the more detailed the law's operational definitions, the more predictable the outcome will become.

Few organizations of disabled people engage in strategic litigation for opening up society. Strategic litigation has been successfully used in disenfranchised groups' struggle for equality such as the women's or Afro-Americans' movements.

Few lawyers specialize in disability discrimination, few law students are attracted to the field, the level of expertise in disability rights among the legal professions including judges is generally low.

Members of the European Parliament can work to improve access to justice

Establishment, at the EU level or the national level, of a Disability Rights Defence Fund, financed by the EU Structural Funds, to support strategic litigation.

Contingency fees would enable more people to protect their rights in court. Contingency fees mean that lawyers collect a percentage of the client's net recovery – when winning but nothing when losing. In this way, there are no financial risks involved for individuals with disabilities or their organizations when going to court. Today, contingency fees are possible in only a few EU states.

In class action suits, individuals with claims against the same opponent can join forces in one suit. Class action, in combination with contingency fees, can enable even small disability organizations to win cases for a large number of persons. In Europe, collective court action is currently complex, time-consuming and hardly an option.

The possibility of suing for corrective and preventive action in court, such as changing company policy, procedures and practices could assure non-repetition. For example, a few years ago the City of New York was taken to court by Disability Rights Advocates, a NGO specializing in strategic litigation in the area of disability rights, for failure to establish an emergency plan that included persons with disabilities. There was no plan for evacuating mobility impaired persons in a major power failure who live or work in tall buildings. Disability Rights Advocates won the case, and the court ordered the City to prepare an inclusive emergency plan within six months. In many countries, for example Sweden, this would not have been possible as you can only file a complaint in court when you already suffered damages. Persons with disabilities rarely sue for the sake of money. We are more interested in eliminating unnecessary, man-made barriers to inclusion and full participation.

Implementation of the UN CRPD into national law is either not at all or extremely slowly happening as EU Member States have often chosen the weakest forms of implementation. On the other hand, EU Directives immediately become binding national laws. Would it be possible to transform the UN Convention into a number of EU Directives?

Finally, disability rights have to be addressed on a higher and more powerful level. In many EU Member States, for example in Sweden, the Ministry in charge of coordinating and monitoring implementation of the CRPD is the Ministry of Social Affairs and Health, and not the Ministry of Justice. This shows that disability, in the eyes of our lawmakers and governments, is still a social welfare and health concern. The rights-based approach to disability is still not understood, is still not implemented. In the eyes of our lawmakers, governments and fellow citizens we are still patients, not citizens.