

The concept of access to justice, in the meaning of the Convention and in a broader framework

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Introduction

How do human rights protect the right of access to
justice for people with disabilities?

Contents

- ▣ Concept
- ▣ CRPD
- ▣ ECHR

Concept

I. Concept

Why is access to justice essential?

A right is not a right unless it can be enforced

Justice must be accessible to all

- ▣ Right to a fair trial (Article 6 ECHR)
- ▣ Right to an effective remedy (Article 13 ECHR)

Concept

What about people with disabilities?

Approach

- ▣ Disability: persons with impairments which in interaction with various barriers may hinder their participation in society (Article 1 CRPD)
- ▣ Removal of barriers which prevent persons with disabilities from obtaining access to justice

CRPD

II. Convention on the Rights of Persons with Disabilities

Article 13 (Access to justice)

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

CRPD

Two dimensions

- ❑ physical
- ❑ substantive

Application

- ❑ *"all legal proceedings"*
- ❑ *"including as witnesses"*
- ❑ *"provision of procedural and age-appropriate accommodations"*

CRPD

1. Physical dimension

A. Access to buildings

- ❑ Waiting room
- ❑ Entrance
- ❑ Tribune
- ❑ Etc.

CRPD

Universal design: services designed so they can be used by anyone without specialised adjustments

B. Access to information about the procedure

- ❑ Braille
- ❑ Sign language
- ❑ Simplified language
- ❑ Etc.

CRPD

2. Substantive dimension

Effective access to the procedure

- ❑ Counsel
- ❑ Representation
- ❑ Explanations

Raising awareness of the rights of persons with disabilities (Article 8 CRPD)

CRPD

Training about access to justice for persons with disabilities (Article 13(2) CRPD)

Foster understanding among

- ❑ Judges
- ❑ Lawyers
- ❑ Administrative staff
- ❑ Police
- ❑ Prison staff

CRPD

The access to justice (Article 13 CRPD) and legal capacity (Article 12 CRPD) of persons with disabilities

Links

- ▣ participation in legal procedure for persons with disabilities
- ▣ judicial protection for the legal capacity of persons with disabilities

ECHR

III. European Convention on Human Rights

1. Case-law

Right to a fair trial (Article 6 ECHR)

Farcas v. Romania (14 September 2010)

No access to buildings

ECHR

Court: no insurmountable obstacles prevented him from being a party to the proceedings

Golder v. United Kingdom (21 February 1970)

Questions

- ❑ Compatibility with Article 13 CRPD?
- ❑ Obligations of States Parties to CRPD?

ECHR

2. Future

Ratification of CRPD

2 ways

- ❑ Reinterpret Article 6 ECHR in the light of Article 13 CRPD
- ❑ Article 53 ECHR

End

Thank you for listening!

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