

Ensuring access to justice for persons with disabilities under the UNCRPD

Constantin Cojocariu
Lawyer, INTERIGHTS

Overview

- The notion of “access to justice” in international law
- Article 13 of the CRPD
- Case-studies



Access to justice – general principles

- The CRPD is the first UN human rights treaty which explicitly includes “access to justice” as a free-standing substantive right.
- Other human rights treaties commonly refer to the “right to equality before the law”
- The European Convention on Human Rights: right to a fair trial (Art. 6) and right to an effective remedy (Article 13).



Access to justice – general principles

- ‘Access to justice’ may be granted in relation to the rights included in the document in question but also to any rights and obligations more generally.
- The substantive contents of “access to justice” in international law was developed through jurisprudence, with the full extent of obligations derived from it yet to be fully determined.
- Possible components of the right of “access to justice”:
 - equality before the courts and tribunals;
 - fair and public hearings, including the right to be heard in person;
 - right to legal aid;
 - A competent, impartial and independent judiciary;
 - Right to an effective remedy;
 - A right of access to international justice?



Article 13 of the CRPD

- Effective access to justice on an equal basis with others.
- Effective access to justice at all phases of the administration of justice, including at preliminary stages, such as initial investigations.
- To be both direct and indirect participants, including being witnesses.
- To receive procedural and age-appropriate accommodations to facilitate access to justice.
- To provide training to those working in the administration of justice, including police and prison staff, in order to help ensure effective access to justice for persons with disabilities.



Article 13 of the CRPD

- Art 13 was incorporated in an earlier version of an article titled “Equal recognition of a Person before the Law”.
- Closely related to
 - Article 12 (Equal recognition before the law);
 - Provisions regarding accessibility (Article 9, or Article 21);
 - The obligations to take into account the situation of women and children with disabilities (Article 6 and 7);
 - Article 33 (national implementation and monitoring)
 - Optional Protocol to the CRPD setting out an individual petition procedure



Article 13 of the CRPD

- The meaning of “justice”
- The types of interaction between persons with disabilities and the justice system envisaged
- The obligations included



Farcas v Romania

(App. No. 32596/04, dec. of 14.09.2010)

- The applicant had muscular dystrophy since childhood, that severely impaired his mobility.
- In 2004 he was constructively dismissed from his job after 20 years' employment, on the basis that he could not access the new premises at which he was expected to work.
- He sought to challenge his dismissal in court for his employers' failure to provide reasonable accommodation.
- However, he was prevented from doing so since the buildings housing local courts as well as local law offices were not accessible for people with disabilities.



Farcas v Romania (ctd.)

- Restrictions on access to justice are permissible as long as “the very essence of the right is [not] impaired” (*Ashingdane v UK*).
- The Court stated that there were other feasible steps that the applicant could have taken to access courts indirectly - through other people or by post.
- Complaint was declared inadmissible and rejected
- *Malone v UK* (1996): accessibility of court facilities to a wheelchair user – no violation
- *Stanford v UK* (1994): the defendant in a rape trial, with a severe hearing impairment, was not able to hear the victim’s testimony – no violation



Djordjevic and Djordjevic v Croatia (Application no. 41526/10, pending)

- The victims are mother and son, living in a high-rise building in Zagreb; son has intellectual and physical impairments.
- Since 2006 they have suffered ongoing abuse and harassment from a group of youths who live in the same neighborhood, ranging from anti-social behavior (such as name-calling, spitting, lewd comments, yelling, drawing insulting messages on the pavement in front of the victims’ flat, causing damage) to acts of physical violence.
- The authorities (police, prosecutors, school, social services) failed, over a long period of time, to respond effectively to the victims’ complaints and put a stop to the offensive behavior.



Djordjevic and Djordjevic v Croatia (ctd.)

There are indications that the rate of abuse and violence committed against persons with disabilities is considerably higher than the rate for the general population, and higher than the rate for the general population, and higher in women with disabilities, particularly women with severe disabilities, where the percentages of abuse far exceed those of non-disabled women. Such abuse can occur in institutions or other types of care and situations, including the family environment. It can be inflicted by strangers or persons known to the individual and can take many forms, for instance verbal abuse, violent actions, or refusal to meet basic needs (CoE Disability Action Plan)



Djordjevic and Djordjevic v Croatia (ctd.)

- Low rates of reporting and recording of disability hate crime.
- Lack of recognition of disability hate crime.
- Lack of skills from the part of police forces to deal with disabled victims of crime.
- Failure to prevent escalation; poor inter-agency coordination.
- Disabled victims and witnesses dismissed as unreliable.
- Low conviction rate.




Malacu and others v Romania
Campeanu v Romania (pending)

- People with disabilities who lived for very lengthy periods or even their whole lives in a psychiatric hospital.
- De facto deprivation of liberty, no legal guardian assigned.
- The victims died because of substandard living conditions and poor care and treatment.
- Superficial official investigation into their deaths; no criminal charges were brought against the perpetrators.



Malacu and others v Romania
Campeanu v Romania (ctd.)

In Europe today, thousands of people with disabilities are still kept in large, segregated and often remote institutions. In a number of cases they live in substandard conditions, suffering abject neglect and severe human rights abuses. In too many cases, premature deaths are not investigated or even reported. (CoE Human Rights Commissioner, 2010).



Malacu and others v Romania
Campeanu v Romania (ctd.)

- Applying procedural rules (for ex. standing or time limits) with flexibility, in consideration of the victims' circumstances.
- the obligation to ensure that closed psychiatric establishments are effectively monitored by independent authorities, aiming at preventing ill-treatment and other forms of abuse, and which are entitled to receive complaints.
- Automatic review of measures resulting in deprivation of rights.
- Other safeguards aimed at preventing abuse in psychiatric institutions.



Thank you

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