

# **BARRIERS OF ACCESS TO JUSTICE OF PERSONS WITH DISABILITIES IN THE EU CONTEXT**

## **“What is needed to ensure justice for persons with disabilities?”**

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# Who is & what does ENIL?

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## ➤ **The European Network on Independent Living (ENIL):**

- is a Europe-wide network of disabled people and their grassroots organisations.
- follows the human rights model of disability and social inclusion, based on solidarity, peer support, democracy, choice & control, self-representation, self-determination and deinstitutionalisation.

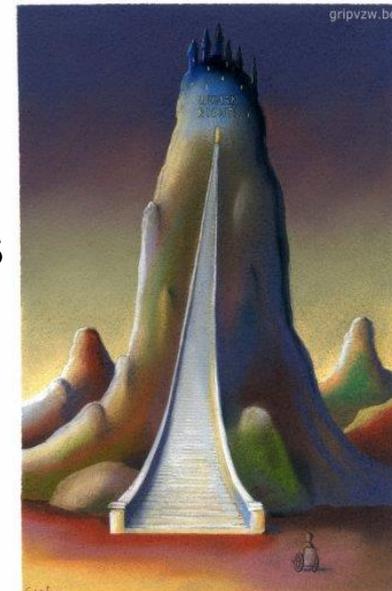
“Persons with disabilities have many rights on paper, but there is a huge gap between theory and practice. To bridge this gap and turn these rights into reality, to make sure we truly can live independently and be included in the community, on equal terms, we have to work on many fronts. One of these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

Dr Adolf Ratzka

# Access to justice faces obstacles :

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- Filing a complaint in court requires paying court fees which is a threshold for many persons with disabilities.
- 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 lawyer's fees for both parts. Few can 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.  
Example. Vanja from CIL Sofia, Bulgaria, She sued the City of Sofia for building an inaccessible subway station in her neighbourhood. She won and was awarded the sum of €200 for damages.



# Access to justice faces obstacles :

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- 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.
- Often the Ministry of coordinating and monitoring the implementation of the CRPD is the Ministry of Social Affairs and Health, 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.
- Legal approaches to disability is often non compatible with the social model of disability
- university based law clinics are severely under-developed, due mostly to restrictive rules on practice and procedures in front of the bar.
- Understanding that Litigation is primarily about rationality and an ethic of justification.
- Disability legislation but not on disability rights

# Initiatives to relieve some barriers. :

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- build a network on litigation
- to reduce costs cooperation with:
  - law firms that are experts in national law on the subjects of our cases without expertise in human rights. They investigate on the specifics of the national legislation and dpo's ensure the human rights perspective.
  - law firms with human rights experience, can do pro bono or low-cost work,
  - universities: interns trough their channels.
  - legal clinic on human right to provide cases that the students investigate in,
- Using political and legal advocacy, strategic litigation and campaigns.
- When laws are introduced to change discriminatory structures and achieve human rights, effective supervision and effective sanctions are indispensable,



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

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- 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. No financial risks involved for individuals with disabilities or dpo's when going to court. Today, they are possible in only a few EU states.
- In class/group action suits, individuals with claims against the same opponent can join forces in one suit. Class action, combined with contingency fees, can enable even small dpo's to win cases for a large number of persons. In Europe, collective court action is currently complex, time-consuming and hardly an option.
- Implementation of the UN CRPD into national law is nearly happening while EU Directives immediately become binding national laws. Transform the UN Convention into a number of EU Directives?

# Inspiring approaches and solutions :

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- good practice by Berit Vegheim : Norway in 2018 enacted comprehensive antidiscrimination legislation covering all grounds of discrimination.
- The civil society had fought to combine all discrimination grounds within one legislation, to make the rights more harmonious.
- The law prohibits direct and indirect discrimination, harassment and instruction to discriminate.
- It also sets out a duty to universal design concerning building, transport and ICT.
- It also contains a duty to appropriate accommodation (no reasonable)
- The duty comes with legal regulations and time frames.
- The foundation "Stopp Diskrimeringen", does a lot of advocacy and teaching activities to empower disabled people, works with providing legal advice, trying to get people to use the court.
- Norway has a double system with a soft law approach where you can take your case to a tribunal and a hard law approach where you can go through the court system.

# Inspiring approaches and solutions :

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- Good practice: Disability Rights Advocates who have a strong cooperation with the disability movement as the key to finding relevant cases within disability discrimination – public interest law firms:

“We try to be fearless. We try to not think like lawyers, but as advocates with and for the community.” We do not look at the question of is there a legal right, but whether there is a wrong and what we can do about it.

“The most recent, and dignified way to improve our situation is the rights-based approach. Now we can act from a position of power. A power that does not come from having laws. A power that comes from using the law, from calmly being able to say, “See you in court”. So let us piss on pity! Let us move the battle from the street to the courtroom!”

Dr. Adolf Ratzka

# Thank you for your attention & see you after the court in the movement!

[www.enil.eu](http://www.enil.eu);  
[www.independentliving.org](http://www.independentliving.org);

"Access to Justice": Adolf, Dr. Ratzka. 2018.

CONFERENCE REPORT MAY 30 2018, Sweden:"USING THE LAW AS A TOOL FOR SOCIAL CHANGE"

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