



The Law as a tool for social change

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The development of legal protection against discrimination

By Csilla Gradwohl

Anti-discrimination is a fundamental human rights issue. One of the major purposes of human rights law as well as anti-discrimination laws is to achieve greater equality. Anti-discrimination laws are based on ensuring rights to people who can claim these rights against forces trying to exclude and repress them.

Since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, the United Nations has confirmed the commitment of the states to promote human rights and ensure them for everybody. Despite the existence of the UDHR stating the goal of equality and dignity for all people, certain groups of the society could not enjoy rights on equal terms with others. These groups were in need of a more developed anti-discrimination legislation and legal protection to counteract social injustices, in order to be able to claim their rights and to oppose the forces of oppression.

The fact that different protected grounds of discrimination can be found in different countries' anti-discrimination laws is partly related to various historical processes. Throughout history, social groups that have often been the targets of discrimination, have organized themselves and fought for recognition and social change. They have successfully gained the support of public opinion and proposed the passage of laws against discrimination.

U.S. inspired the rest of the world

The United States has played a key role in developing anti-discrimination legislation. Other countries and the European Union have been influenced and inspired by the American anti-discrimination laws and have taken certain elements of them into legislation.

The early development of anti-discrimination laws in the U.S. is connected to the fact that the rights of the people constitute the core of the American democracy. The tradition of individual rights and a legal system which attaches a great importance to individual court decisions reflect the American way of legislation.

In 1951, Oliver Brown started a class action against a school board since his and other black parents' children could not attend their closest neighbourhood schools but were directed to segregated schools. In 1954, the Supreme Court declared state laws establishing separate public schools for black and white students to be unconstitutional and thereby prohibited the segregation of black and white students in schools. This judgement had a major impact in the field of equal rights and gave inspiration to legal activists, even internationally.

The very first law that prohibits discrimination between individuals was the Civil Rights Act of 1964, which outlawed discrimination on the basis of race, color, religion, sex or national origin. Disability as a protected ground of discrimination was introduced by the Rehabilitation



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Act in 1973 in the U.S., which extended civil rights to persons with disabilities through its famous Section 504.

Shift of perspective from care to human rights

Persons with disabilities, as some other groups, share a common history of being disadvantaged and discriminated. The year of 1981 was proclaimed the International Year of Disabled Persons by the United Nations. It called for a plan of action at both national and international level, with an emphasis on equalization of opportunities, thereby placing disability issues on the international political agenda. The structures and attitudes of society began to be considered the cause of inequalities. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities were adopted by the UN in 1993, representing a strong political commitment of the governments to take measures to achieve the equalization of opportunities for persons with disabilities. The perspective increasingly shifted towards equal opportunities for all and the requirement of removing the barriers in society began to be emphasized.

Different theoretical models were developed in disability studies during the 1970s and 1980s, and they had different explanation of disability. The so called social model has had a great influence on disability research. The social model regards disability as a social construction and places the focus on the barriers in society. This contrasts with the medical model, where disability is seen as an impairment that needs to be treated or eliminated. The “problem of disability” is by this way of thinking located within the person who becomes regarded as an object of social care and medical treatment. The social model of disability has been considered as the philosophical basis for the Convention on the Rights of Persons with Disabilities (CRPD), which was adopted in 2006 by the United Nations and entered into force in 2008.

The CRPD is a legally binding international human rights treaty which guarantees both civil and political, as well as economic, social and cultural rights to persons with disabilities. The drafters codified the human rights model of disability, which develops the social model further. Meanwhile the social model requires non-discrimination rights for persons with disabilities, the human rights model encompasses both sets of human rights. Persons with disabilities are regarded as subjects of human rights on an equal basis with others, and society is responsible for ensuring that persons with disabilities can be an integral part of it.

National laws and international directives

During the 1980s, the American disability movement united and worked intensively for a comprehensive anti-discrimination law. As a result of the political and legal work, the Americans with Disabilities Act (ADA) entered into force in 1992, as an extension of the Civil Rights Act and the Rehabilitation Act. ADA is a civil rights law that prohibits discrimination against persons with disabilities in all areas of public life, and it ensures equal opportunities in public accommodation, employment, transportation, state and local government services and telecommunications. In addition to the prohibition of discrimination, ADA sets certain minimum standards for accessibility. ADA was followed by a series of anti-discrimination laws concerning disability elsewhere. Canada was the first country that



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introduced the prohibition of discrimination on the ground of disability in its constitution, in 1982.

The European Union has created a number of anti-discrimination laws. Under the Treaty of Amsterdam of 1997, a new Article 13 underlined the powers of the EU concerning non-discrimination on a wide range of grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. This led in turn to a series of new equality directives, such as the EU Directive 2000/78, the so-called Employment Equality Framework Directive, which set up a general framework for equal treatment in employment and occupation, in order to combat discrimination based on religion or belief, disability, age and sexual orientation on the labour market. The directive only sets out minimum requirements which means that the member states may provide for a higher level of protection, including the adoption of positive measures in this field, in their national legislation.

Swedish anti-discrimination legislation

Today's anti-discrimination legislation in Sweden has its roots in the gender equality work of the 1970s. It was also during the 1970s when the rights of persons with disabilities to education and work began to be emphasized and the structures and attitudes of society began to be seen as the cause of inequality. The Swedish Disability Movement, partly inspired by the American rights activists, actively worked for counteracting discrimination by strengthening the legal protection of persons with disabilities.

As a result, the Act Concerning Support and Service for Persons with Certain Functional Impairments was enacted to complement other laws and to guarantee persons with severe disabilities the right to certain measures for better living conditions. In 1999, the Act on the Prohibition of Discrimination in Working Life on Grounds of Disability entered into force, as a modern national disability employment non-discrimination law. During the 2000s, a number of anti-discrimination laws were enacted, involving disability as a protected ground of discrimination.

In 2009, a comprehensive Discrimination Act entered into force, replacing seven already existing laws that prohibited discrimination: the Equal Opportunities Act from 1991, the Act on Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or Other Religious Faith from 1999, the Prohibition of Discrimination in Working Life on Grounds of Disability Act from 1999, the Prohibition of Discrimination in Working Life on Grounds of Sexual Orientation Act from 1999, the Equal Treatment of Students at Universities Act from 2001, the Prohibition of Discrimination Act from 2003 and the Act Prohibiting Discriminatory and Other Degrading Treatment of Children and School Students from 2006.

The Swedish Discrimination Act is intended to combat discrimination on grounds of sex, transgender identity or expression, ethnic origin, religion or other belief, disability, sexual orientation and age. At the same time with the introduction of the law, a new government agency, the Equality Ombudsman was established to supervise compliance with the Act. The Discrimination Act introduced a new penalty, compensation for discrimination, for infringements of the Act. Furthermore, it introduced a right for civil society organizations,



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whose statutes state that they are promoting their members' interests, to bring an action as a party on behalf of an individual.

The Swedish disability movement worked intensively for an increased protection against discrimination of persons with disabilities. To draw the attention of the public and decision-makers that denial of reasonable accommodation constitutes a form of discrimination, annual “marches for accessibility” were held during 2003 to 2012 throughout the country. In the meantime, thousands of complaints regarding denial of reasonable accommodation were sent to the at the time Disability Ombudsman. Between 2011 and 2014, a demonstration took place every Thursday in front of the Government Offices, before the government's weekly meeting. People from the entire Swedish disability movement handed out flyers claiming that denial of reasonable accommodation must be introduced legally as a form of discrimination. These actions of the disability movement have greatly contributed to the introduction of denial of reasonable accommodation as a new form of discrimination in the Swedish Discrimination Act 2015. It shall contribute to increase accessibility in society to enable persons with disabilities to be able to participate on equal terms with others. It shall be noted that the CRPD states that denial of reasonable accommodation is a discrimination on the basis of disability. Human rights presuppose access. Accessibility represents a precondition for persons with disabilities to enjoy all their human rights and fundamental freedoms.

Civil society has a key role

As described above, anti-discrimination laws have been introduced after people who have experienced discrimination have joined forces and worked to make their voices heard and their demands met – as a response to having a significantly lower living standard than other groups in society despite the existence of various documents guaranteeing rights for all people. Civil society plays a key role in developing anti-discrimination legislation for a wider societal change. It is equally important to formulate the demands even legally and to be involved in how the laws are to be written.

However, the existence of well-formulated, well-intentioned and comprehensive anti-discrimination provisions is not enough. Even when discrimination has been abolished *de jure*, certain groups of the society continue to be disadvantaged in different fields of social life, such as the labour market, education, housing or health care. Laws must actively be used as tools to contribute to positive changes in society and bring about paradigm shifts if required. Discrimination decreases when laws which are to create equal opportunities are complied with. Laws are usually written in a manner which requires interpretation and application by the courts in the given cases.

The case law thus is a key to clarify what the law means in concrete cases and what people may require under the law. In other words, case law is an important key in changing the norms that apply in society. If there is a lack of case law in various areas, anti-discrimination laws are risking becoming only laws on paper, rather than laws that lead to action. At best they have a symbolic value. Therefore, it is important that people who feel discriminated report what happened to the responsible institutions. They can also bring strategic legal action in cooperation with civil society and lawyers. In broad terms, this is how anti-discrimination law functions.