

International Encyclopedia of Rehabilitation

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Legal Services: A comment from a German view

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This article is a response to Legal Services for Disabled People in New Zealand.

Introduction

The German situation is different from the situation in New Zealand. In Germany there is no common concept of Community Law Services. Community Law Services in Bremen and Hamburg are exceptional. Legal advice in the other 14 of 16 states of Germany is given only by lawyers and for selected subjects by trade unions and by civil associations, as in the field of disability law by disabled persons associations. Persons with low income are subsidized for the necessary utilization of lawyers before going to court (advisory aid – Beratungshilfe) and when going to court (legal costs aid – Prozesskostenhilfe). Also the state authorities themselves are obliged to advise citizens in the field of their activity, especially the social security authorities.

Service and legal advice by social security authorities

All German authorities on the federal, state and municipal level are obliged to advise citizens in the field of their activity according to the Law of Administrative Procedures (Verwaltungsverfahrensgesetz, VwVfG § 25). This obligation is specially refined for the field of social security in the social code, book 1 (Sozialgesetzbuch - SGB I, §§ 14-16). As a problem for disabled persons it has been identified that the different authorities of social insurance, social aid (municipal) and social assistance (state) had not been able to give legal and other advice in a comprehensive and definite way for all of them. To change this in 2001 legislation established the common service units for rehabilitation in the social code, book 9 (SGB IX, §§ 22-25). The social security authorities are obliged to work together in forming these common service units and to provide them in every town or county with skilled personnel.

In practice, the common service units do not work very well. In most cases they are provided by the pension insurance – which is also responsible for parts of the medical and vocational rehabilitation – but they still lack cooperation with other authorities, especially the municipalities, responsible for social aid. According to the German constitution it is not possible to bind the municipalities to comply with federal laws.

Disabled persons sometimes do not trust the social security authorities and expect not to be advised in a fair and competent way. They do not fear the non-realisation of their rights, but that fiscal interests could direct the process of advising. They have been backed by two recent decisions of the Federal Constitutional Court, which said that legal aid costs for taking a lawyer is necessary in cases where the recognition of being severely disabled is disputed, regardless of the inquisitorial proceeding of the administration (BVerfG, Az. 1 BvR 439/08, 6th May 2009) and that advisory aid can be claimed also in cases where invalidity pensions are disputed, regardless of the

obligation of the pension insurance to advise citizens (BVerfG, Az. 1 BvR 615/09, 13th August 2009).

The social and legal function of disabled persons associations

The disabled persons associations have an important social and legal function for setting disability law in action in Germany. There exist several associations, cooperating under the umbrella of the German Disability Council (Deutscher Behindertenrat). The most traditional and biggest associations are the Sozialverband SoVD and the Sozialverband VdK with together more than two million members. Traditionally they give legal advice to their members and are entitled to stand in the proceedings of the social courts for their members. They employ several hundred lawyers and advisors throughout the whole country.

In 2002 the Law for the equal treatment of disabled persons (Behindertengleichstellungsgesetz – BGG) passed; in 2006 the Common Equal Treatment Law (Allgemeines Gleichbehandlungsgesetz – AGG). The BGG establishes obligations for the administrative bodies on the federal level, especially for observing the principle of accessibility. It is complemented by laws on the state level. The AGG includes legislation for equal treatment of disabled persons by employers, landlords and other private parties. The BGG gives to the disabled persons associations the right to perform legal action when the law is violated by public authorities (Verbandsklage, § 13). It is not necessary than to have a person as a plaintiff. The AGG gives the associations the right to support individual plaintiffs who claim being discriminated against (§ 23). The BGG gives the associations the right to negotiate with private enterprises or their associations about agreements on accessibility (Zielvereinbarungen, § 5), for example in supermarkets or restaurants. They are collected in a central official register (Zielvereinbarungsregister).

These organisational rights seem to be innovative, but have not been used often in the years since 2002. But the disabled persons associations are involved in the political process in several ways, often taking part in hearings of the legislative process or starting referenda, which is possible on state level.

Conclusion

There are different ways of putting disability law into action. Comparative research on effectiveness is needed.

Legislation in the Federal Republic of Germany

- Behindertengleichstellungsgesetz 2002 - <http://bundesrecht.juris.de/bgg/index.html>
- Zielvereinbarungsregister - http://www.bmas.de/portal/19564/2007_09_21_zielvereinbarungsregister.html
- Sozialgesetzbuch – Erstes Buch – Allgemeiner Teil 1975 - http://www.gesetze-im-internet.de/sgb_1/index.html
- Sozialgesetzbuch – Neuntes Buch – Rehabilitation und Teilhabe behinderter Menschen 2001 - http://bundesrecht.juris.de/sgb_9/index.html
- Allgemeines Gleichbehandlungsgesetz 2006 - <http://bundesrecht.juris.de/agg/>
- Beratungshilfegesetz - <http://www.gesetze-im-internet.de/berathig/index.html>

Disabled Persons Associations

- Sozialverband VdK - <http://www.vdk.de/cgi-bin/cms.cgi?ID=de1>
- Sozialverband SoVD - <http://www.sovd.de/>
- Deutscher Behindertenrat - <http://deutscher-behindertenrat.de/ID28959>
(English)