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Disability Rights and Cross-National Disparities in Europe

AUDE LEJEUNE

Out of a European population of 448 million, some 80 million people have a disability. People with disabilities are thus the largest minority group in the region, according to the European Parliamentary Research Service. Compared with the nondisabled, they also still face persistent exclusion and unequal opportunities in all areas of their lives.

Disability and Equality

Seventh in a series

People with disabilities often leave school early. According to data from Eurostat, the statistical office of the European Union, 60 percent of Romanians who are 18 to 24 years old and have at least one “long-standing limitation in performing usual activities,” such as walking, seeing, or concentrating and remembering, have not completed their schooling, whereas just 17 percent of young people with no such difficulties have left school. Even in Sweden, where the rate of leaving school early is the lowest in Europe, 10 percent of young people with disabilities have not finished school, compared with 4 percent of their nondisabled peers.

The employment rate for people with disabilities is also much lower than that of the general population. In EU member states, only 47 percent of those who report at least one difficulty in an activity of daily living are employed, compared with 67 percent of those having no such difficulty. In some countries, such as Hungary and the Netherlands, this employment rate gap is even wider, reaching almost 40 percentage points (24 versus 61 percent in Hungary; 42 versus 80 percent in the Netherlands). Even though work is not the only

source of income available to people with disabilities, its absence exposes them to a higher risk of poverty and precarity.

People with disabilities who enter the labor market also experience different employment conditions than people without disabilities. They are more likely to be employed in menial jobs, and to find it more difficult to climb the hierarchical ladder and reach managerial positions. In addition to these inequalities in status, there are also inequalities in remuneration: the EU average for income of people with a recognized disability is lower than that of nondisabled people. Though these inequalities in employment and remuneration can be explained in part by lower levels of training and qualification, they are also the product of a whole series of social mechanisms—from lack of accessible public transport to assumptions about limited capabilities—that contribute to excluding people with disabilities from the labor market.

Education and employment are not the only areas where such inequalities are found. They are also apparent in access to goods and services, housing, and political participation. Inequalities between people with and without disabilities persist despite the fact that European civil society and public authorities have been relatively active over the past 70 years in trying to integrate people with disabilities into society, at both the European level and the national level.

This article aims to explore both the European model of disability rights, and disparities between countries’ policy approaches and outcomes. It will show how these disparities can be explained by distinct national histories of social mobilizations and the differing ways in which public authorities have addressed disability in each country. But what makes Europe unique in disability policy is

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the role of the European Union. The existence of a supranational level of government in Europe—the EU—has made it possible to define a variety of policies aimed at establishing shared goals and perspectives across all EU member states.

A EUROPEAN CIVIL RIGHTS MOVEMENT

In the field of disability policy, proactive European programs have been in place since the 1970s. At first, these policies aimed to promote the integration of people with disabilities into the labor market, which was seen as the most appropriate mechanism to facilitate their participation in social life. The policies also encouraged member states to provide social protections, such as unemployment benefits, for people who were not able to work.

In the 1990s, disability activists and scholars from the emerging academic field of disability studies played a crucial role in lobbying for policy changes at the European level. In many countries in the region, new civil society groups were created, run by people who themselves had disabilities. In contrast with the preexisting, long-established organizations, which were mostly run by families of people with disabilities and aimed to assist and protect them, these new groups made different demands: they wished to speak in their own name, and lobbied for rights and social inclusion.

These groups were directly inspired by the political mobilization of grassroots groups in the United States that had lobbied to change the understanding of disability and to frame it as a civil rights issue. Their efforts led to the 1990 enactment of the Americans with Disabilities Act (ADA), the first comprehensive law in any country prohibiting discrimination on the ground of disability and guaranteeing the rights of people with disabilities to participate fully in society. European organizations also demanded passage of a binding legal text at the EU level to ensure equal opportunities for people with and without disabilities.

Whereas previous policies had focused on providing social allowances and creating socially separated institutions (such as sheltered workshops), rehabilitation programs, and employment quotas, activists asserted that people with disabilities should have the right to equal opportunities and inclusion within the wider society. Such demands were encapsulated by the leading slogan of

the disability movement, “Nothing about us without us.”

This social mobilization led to a new legal and policy approach to disability. In 2000, 10 years after the ADA was enacted, an EU directive prohibiting discrimination in employment based on sex, ethnicity, sexual orientation, religion, age, or disability—the Employment Equality Directive—was adopted by the European Council.

This regulation provides people with disabilities with stronger protection against discrimination by imposing on employers a specific duty to make reasonable accommodations. That means taking appropriate measures to enable people with disabilities to obtain job training and employment, and to advance in the workplace, unless doing so would impose a disproportionate burden on the employer. (In practice, this has not led to many new duties for employers.)

This right to reasonable accommodation has become emblematic of a new approach based on inclusion, self-determination, and equal treatment. In each EU member state, national legislation was passed to prohibit discrimination based on disability, among other grounds, following the principles of the Employment Equality Directive.

*A legalistic, rights-based approach
has taken hold in Europe.*

TAKING ON SOCIAL BARRIERS

The Employment Equality Directive was not the only instrument that contributed to the diffusion of an antidiscrimination approach to disability in Europe. In 2007, all EU member states but one ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD), with Latvia following a year later. The CRPD states that disability must be understood as a social construct rather than a medical phenomenon. It seeks to guarantee the rights of people who have “long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

As a result of these changes in laws, European policymakers have started to shift their focus from social protection toward equal rights and antidiscrimination. The remit of disability policies has also been extended into new areas. Instead of focusing only on employment, or on alternative sources of income in case of

unemployment, the antidiscrimination approach aims to ensure the full participation of people with disabilities in all areas of social life, from the cultural, family, and sexual spheres to politics and activism.

As in other parts of the world, such as East Asia, as described by Celeste Arrington in *Current History's* September 2021 issue (in the first installment of this series), a legalistic, rights-based approach has taken hold in Europe. Victims of discrimination are encouraged to turn to the judicial system to assert their rights as citizens who are entitled to fight for inclusion within society. The enforcement of antidiscrimination legislation is guaranteed by courts and tribunals, which can hold to account any business or other entity that fails to comply with the law and fulfill its obligations to make reasonable accommodations for the disability of an employee, such as by modifying working hours. In April 2013, a landmark decision of the European Court of Justice in a Danish case gave a definition of reasonable accommodations, including changes in workplaces, work schedules, and so forth.

In order to facilitate access to justice for victims of discrimination, each EU member state was obliged by the EU directive to set up an independent public agency charged with fighting discrimination and providing legal assistance to plaintiffs. Thus, France has its *Défenseur des Droits*, Sweden its *Diskriminerings Ombudsman*, Germany its *Antidiskriminierungsstelle des Bundes*, and Romania its *Consiliul National pentru Combaterea Discriminării*. New policies have also granted nongovernmental organizations greater access to the legal system. As a result, this new legal framework opened up opportunities for disability activist groups to use litigation as a mechanism for enforcing the law and pursuing rights for people with disabilities.

In 2019, the EU went a step further in its efforts to integrate people with disabilities into society. Directive 2019/882, known as the Accessibility Act, was passed with the aim of guaranteeing all Europeans easier access to goods and services in various domains, such as banking and public services websites. The Accessibility Act explicitly took into account the obligations deriving from the CRPD. It does not include any duty related to housing or public transportation, however. Each member state is responsible for defining, in its own national laws, whether and to what extent accessibility must be ensured in these domains.

This is not to say that the conditions of existence for people with disabilities are the same in all European member states. There are major disparities between countries in terms of income and integration into ordinary life for people with disabilities.

In the 1970s, when the European Union's predecessor, the European Economic Community, launched its first disability policies, member states had already been making policy in this area on the national level for more than sixty years, as the political scientist Daniel Kelemen has noted. In most European countries, disability became an issue of public concern after World War I, when many wounded veterans returned from combat. Each country dealt with the issue in a different way, however. The resulting national traditions created distinct path dependencies (a long-term series of policy choices and consequences determined by those traditions) that are still visible today. Disparities between European countries are apparent not only in public policies at the national level and in social mobilizations, but also in basic living conditions for people with disabilities.

A comparison of the situations for disability rights in Sweden and France is instructive. These two EU member states represent two different models of advocacy and state intervention. A look at the differences in their social mobilizations and public policies aimed at integrating people with disabilities into the labor market reveals not only distinct national approaches to disability, but also deep inequalities.

IN FRANCE, COUNTING TO INTEGRATE

Under the French model, the approach of public authorities to disability can be summarized by two words: counting and integration. Disability policies have primarily focused on integrating people with disabilities into the labor market. This goal has mostly been pursued through an employment quota system, an approach also taken in other EU member states, such as Germany, Italy, and Poland.

In the aftermath of World War I, a French law required private companies and public administrations to recruit at least 10 percent of employees from among those who had become disabled as a result of war injuries or an industrial accident. In the same period, a system of organizations was established for the employment of people with disabilities who were not able to work in regular jobs. This system was, and remains, separate from the

ordinary labor market. In these sheltered workshops—called *établissements et services d'aide par le travail* (establishments and services for assistance through work)—people with disabilities are recruited with the status of “users” rather than employees. They do not receive the same protections from labor laws as those working under employment contracts.

In 1957, alongside the system of sheltered workshops, a new quota system was established to grant people with disabilities a certain priority for employment in the ordinary labor market. This was conditional on a person obtaining the status of “disabled worker,” an administrative determination by an interdisciplinary commission comprising physicians, social workers, and civil society leaders, among others. Over the years, the quota requirement has oscillated within the range of 3–10 percent. In 1987, the quota was set at 6 percent; a financial contribution to an assistance fund became compulsory for companies that did not comply.

A law on “equal opportunity, participation, and citizenship for people with disabilities” that took effect in 2005 reinforced the quota-based system. It also introduced the antidiscrimination approach to disability into French law for the first time, however. In contrast with the quota system, this approach guarantees inclusion and equality of access to the labor market for everyone, not only for those who have previously been officially recognized as disabled.

From this perspective, disability is seen as being socially constructed, and resulting from the interaction between people with disabilities and their physical, social, and institutional environments, which have not been sufficiently adapted to their needs. According to this logic, all aspects of work environments—including workplaces, schedules, and buildings—must be made accessible to people with all types of disability.

In France, the introduction of the antidiscrimination framework in relation to disability, including the right to reasonable accommodation, did not result from mobilization on the ground by local movements. Instead, it was driven by the EU’s adoption of the Employment Equality Directive. The legal recognition of a right not to be discriminated against on the ground of disability was also connected to French authorities’ concern about

the distribution of social security benefits, in a context of drastic cuts in public funding for welfare provision.

Indeed, the antidiscrimination approach has had concrete effects on the distribution of social allowances since the 2005 passage of the French law on disability, as shown by researchers Seak-Hy Lo and Isabelle Ville. The disabled adult allowance used to be given to individuals depending on their degree of “incapacity,” conceived as a deficit in relation to a nondisabled worker, as established by a physician. The allowance is now tied to the regular evaluation of disabled people’s “employability,” with the aim of encouraging participation in the labor market by everyone who is able to work.

In France, the antidiscrimination approach has not entirely replaced the older system. The integration of people with disabilities in employment now relies on two concurrent logics: first, their official recognition as workers with disabilities, different from others who have no disability; and second, the adaptation of work

environments to their needs, on the principle that everyone should be treated equally. In this context, ambiguities persist.

For instance, if a worker lodges a complaint of discrimination based on disability with the *Défenseur des Droits*, it is advantageous for that person to have first obtained the status of disabled worker. Legal investigators working for the *Défenseur des Droits* consider this official recognition to be the first step in the pursuit of workers’ rights. But it is based on a medical and individual assessment of the person’s disability, which runs counter to the broader social conception of disability that prevails in the antidiscrimination approach.

Thus, French disability policies aimed at promoting equal treatment and opportunities for all human beings, in particular by fighting against all forms of discrimination on the basis of disability, have not erased the previous logic of counting people with disabilities and regulating the status of “disabled worker.” Although France has ratified the CRPD, which defines disability as the product of the interaction between people with disabilities and their environment, its policies are still strongly influenced by a categorical and individual approach to disability.

The new approach is based on inclusion, self-determination, and equal treatment.

TOWARD INCLUSION IN SWEDEN

Sweden's model of disability policy combines social protection with inclusion. As in other Scandinavian countries, Swedish disability policies have been built on a particular set of pillars: universalist income-maintenance provisions for any person who cannot work because of an "impairment" (defined as any loss in relation to "normal" physical, mental, intellectual, or sensory capabilities), major efforts to promote the inclusion of everyone in paid work, support services aimed at promoting autonomy, and an emphasis on the accessibility of public places.

Public spending on "incapacity" benefits, for those who are deemed unable to work owing to sickness, disability, or occupational injury, has long been much higher in Sweden, Finland, and Denmark than in other European countries. In 2019, according to the Organization for Economic Cooperation and Development, such spending represented 4.9 percent of gross domestic product in Denmark, compared with only 1.5 percent in Hungary.

Sweden is often cited as having a successful inclusion model, with policies that are relatively congruent with the accessibility objectives defined by the CRPD. As early as the 1950s, as noted by sociologist Jan Tøssebro, disability policies in Sweden encouraged the inclusion of people with disabilities in society through a process of normalization, designed to offer them living conditions similar to those of nondisabled people. Sweden also experienced the trend of deinstitutionalization earlier than other European countries.

In the 1990s, in a context of financing deficits in social security funds and narrowing eligibility, disability activists lobbied for change. They argued that Sweden had succeeded in providing social protection for people with disabilities, as well as sheltered workshops separate from the ordinary labor market, but had failed in guaranteeing them access to the paid labor market. By demanding such access, they played an important role in promoting an antidiscrimination approach to disability, influencing the decisions and actions of policymakers, employers, and civil society groups.

In 1999, as a result of their mobilization, the Swedish parliament passed a law prohibiting employment discrimination based on disability. Under this law, every person applying for a job is guaranteed the right to be judged on the basis of their employment capacity, rather than on the

basis of their disability. Employers also have a duty to make reasonable accommodations to the needs of their employees with disabilities by modifying the work environment. On this matter, Sweden's 1999 law preceded by one year the EU Employment Equality Directive. In contrast with what happened in France, where the national law was inspired by the European directive of 2000, the Swedish government was directly influenced by the ADA, which had been passed nine years earlier in the United States.

Throughout the early 2000s, Swedish laws prohibiting discrimination were extended from the field of employment to other areas, such as education, public transport, and the built environment. This trend culminated in the 2009 adoption of the Antidiscrimination Act, which addresses all kinds of discrimination, including disability. In compliance with the law, public services called Supported Employment Programs have been put in place to assist people with disabilities in finding a job and to provide wage subsidies to employers recruiting employees with disabilities. Additionally, the act obliges employers to make reasonable accommodations in workplaces to fit the needs of workers with disabilities.

The comparison of France and Sweden shows how older disability policies now coexist with antidiscrimination measures aimed at promoting full participation in society for everyone. Both protection and inclusion measures are implemented in different ways in each country, however, depending on distinct national histories of disability policies. To include people with disabilities in the labor market, France chose a system based on quotas to ensure that employers fulfill their duty to recruit employees with disabilities, whereas Sweden encouraged inclusion through job-coaching programs.

DISCRIMINATION AND DISPARITIES

Over the past twenty years, the European Union and the CRPD have played important roles in shaping disability policies in all EU member states. Some countries, such as Sweden, had already taken measures to guarantee inclusion and prevent discrimination against people with disabilities in employment before the adoption of the EU directive of 2000. But this was not the case for all member states. For some, like France, antidiscrimination rhetoric arose later. Meanwhile, the living conditions of people with disabilities still vary substantially. European statistics show that access to

education, health services, employment, and public transportation for people with disabilities differs widely from Northern to Southern Europe, and from Western to Eastern Europe.

Beyond these cross-national disparities, the introduction of an antidiscrimination approach has influenced the ways in which people with disabilities understand their own experiences and pursue their rights in the majority of member states. Health and disability have recently become the grounds of discrimination that are most frequently reported to equality agencies and to the civil justice systems in many EU countries, ahead of complaints relating to ethnicity and sex.

In France, for example, 33 percent of complaints received by the Equality Agency in 2018 concerned discrimination on the grounds of disability or health, whereas only 25 percent related

to ethnic origin, skin color, and/or nationality, and 8.5 percent to sex and/or pregnancy. The same trend can be observed in Romania, where in 2019, 30 percent of complaints concerned disability or health, 17 percent ethnicity, and 8 percent sex.

As these figures show, people with disabilities in Europe can still face challenges when they try to assert their rights. They may now file complaints with public agencies devoted to ensuring compliance with nondiscrimination laws. Such cases, often brought by associations and activist groups, can lead to an investigation by these agencies, or to lawsuits brought before civil, criminal, or administrative courts. These actions, as well as the media coverage of such cases, have concrete, though still extremely limited, effects on the inclusion of people with disabilities in European society. ■