

Access to justice in Europe

Article 47 falling under the 'Justice' Chapter of the Charter of Fundamental Rights of the European Union guarantees the right to effective access to justice.

Background

According to international and European human rights law, EU Member States must guarantee everyone the right to go to court, or to an alternative dispute resolution body, and to obtain a remedy when their rights are violated. This is the right of access to justice. Under EU law, everyone is also entitled to an effective remedy before a court to enforce the rights that EU law gives them. One important area is non-discrimination law where EU law prohibits discrimination on grounds of sex, racial or ethnic origin, sexual orientation, age, disability and religion or belief. This factsheet provides information on access to justice, focusing on non-discrimination law, excluding criminal law.

Key issues

Without a right of access to justice, victims are not able to enforce their rights or put right the damage suffered.

The right of access to justice can be broken down into the following component parts. The right to:

- a fair and public hearing by an independent and impartial court;
- receive legal advice, be represented and defended during a case;
- legal aid if a victim cannot represent him/herself in court and cannot pay for a lawyer;
- have a case decided within a reasonable time and obtain an adequate remedy.

Ways forward

Time limits

When going to court, an alleged victim is required to start legal proceedings within a certain time limit. The time limit should strike a fair balance: the victim needs enough time to decide whether he/she has a decent case and wants to go to court. But the time limit should not be too long because it puts the alleged perpetrator in a situation of uncertainty. Most EU Member States have time limits of between three and five years. However, in the area of employment, the period tends to be much shorter, such as in Slovenia where it is eight days.

EU Member States should make sure that time limits are not too short. They could consider allowing the limit to start running only when the victim becomes aware of the violation.

Legal standing

In the area of non-discrimination law, EU Member States are under an obligation to give associations, such as non-governmental organisations (NGOs) and trade unions, a right to bring cases on behalf of or in support of victims, with the victim's permission. Some Member States (like Belgium, Hungary and Ireland) allow associations to bring claims, even where a victim cannot be identified or where there are patterns of discrimination. This is known as a 'public interest action'. Outside the area of non-discrimination law or environmental law, usually only the victim or their representative can go to court.

EU Member States should consider allowing public interest actions. This is important as victims often do not bring cases to court themselves because they:

- are unaware of their rights;
- cannot afford to;
- fear negative consequences, such as losing their job if they complain about their employer.

Length of proceedings

The amount of time a court takes to deliver a judgment depends on how complicated a case is and the number of appeals. So it is not possible to say exactly how long cases should take. In some EU Member States there are serious delays. If victims have to wait too long, it can make the right of access to justice pointless. Long delays also deter victims from going to court at all.

EU Member States should consider introducing fast-track procedures for urgent cases. Where cases relate to claims for smaller amounts of money, or do not involve complicated questions of evidence and law, simpler procedures could be created. Examples of this can be found in Austria, Belgium, Hungary and the United Kingdom.

Legal costs and legal aid

For many people the cost of going to court is too high. All EU Member States offer some form of legal aid where the state will either help you pay for a lawyer or appoint a lawyer to act for you. To determine who is entitled to legal aid, some Member States use a 'means test' based on wealth and some also look at how likely a case is to succeed.

Although there is no absolute right to legal aid under human rights law, the European Court of Human Rights (ECtHR) uses a different test. It looks at the importance of the right you are trying to enforce, as well as whether the denial of legal aid will stop you from having a fair hearing. Because the test of the ECtHR is more generous, it is likely that many victims in EU Member States are not receiving legal aid when they should.

EU Member States should ensure that legal aid is available when it is necessary to ensure a fair trial. They could also consider:

- providing centres offering free legal advice;
- encouraging individuals to take out legal insurance;
- encouraging dispute settlements through alternative dispute resolution bodies.

The right to a remedy

Victims are entitled to a remedy that makes up for the damage they have suffered and deters new or persistent perpetrators. Compensation is the most common remedy. Levels of compensation in discrimination cases vary considerably between EU Member States. These differences cannot be explained just by the variation in living costs in different countries. Moreover, levels of compensation may not be high enough to deter perpetrators or make up for the damage done to victims.

EU Member States could look into levels of compensation for discrimination to ensure they are adequate.

Remedies available at the European and international levels

Where individuals have been unsuccessful in the national courts, they may turn to bodies at the European or international levels. The Court of Justice of the European Union (CJEU) can decide cases concerning breaches of EU law. However, complaints about human rights violations are more often directed at the ECtHR, which monitors compliance with the European Convention on Human Rights. The European Committee of Social Rights (ECSR) can also receive 'collective' complaints from certain organisations about violations of the European Social Charter. United Nations (UN) bodies may also decide on complaints about violations of UN human rights treaties, if the state has consented to the procedure.

These systems have different advantages. The CJEU has strict rules on legal standing making it difficult to actually take a claim to court. The ECtHR has an extremely high number of cases, creating delays in delivering judgments. Reforms have been introduced to help by dealing with 'repetitive' cases jointly. The ECSR may only deal with complaints from specific organisations, rather than individuals. The UN bodies are low cost to access because there is no need to be represented by a lawyer. However, their decisions are not legally binding.

EU Member States should consider widening the rules on legal standing before the CJEU. They should also ensure that they make changes in their legislation required by ECtHR judgments to avoid repetitive violations. Further, they should consider consenting to the complaints procedures under the UN treaties where they have not done so.

Further information:

An overview of FRA activities in the field of accessing efficient and independent justice in Europe is available on the FRA website at:

http://fra.europa.eu/fraWebsite/research/projects/proj_accessingjustice_en.htm

The FRA report *Access to Justice in Europe: an overview of challenges and opportunities* is available online at:

http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub_access-to-justice_en.htm