

## NEWSLETTER CLIMATE ANTIREPRESSION #23 - October 2023

Welcome to Newsletter No. 23,

This time with a focus on "People with disabilities in action". We are delighted to have been able to work with the "Rollfender Widerstand" group for this issue. People with and without disabilities are organised in this group, which is also happy to welcome new members: [fightableism.noblogs.org](http://fightableism.noblogs.org)

This newsletter is also about repression against BlockNeurath and CancelLEJ.

Have fun (and anger) reading!

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CANCEL LEJ MUST ACCEPT SETTLEMENT

In July 2021, activists from the climate justice movement protested at the gates of DHL against the expansion of Leipzig Airport. The logistics company had the protesters taken into custody and subsequently threatened them with high claims for damages. The people affected forced DHL to submit a settlement offer through public action, which still provides for high monetary payments. Due to the time pressure, they have now unfortunately had to accept it and are dependent on financial support: [www.repressionnichtzustellbar.com/solidarität](http://www.repressionnichtzustellbar.com/solidarität)

### **Newsletter - Focus on "People with disabilities in action"**

People with disabilities (PWD) are part of our movement. They often lack visibility in society, and unfortunately this also applies to anti-repression work. We often lack knowledge about how special rights and discrimination affect activist PWDs in practice. A self-organised group of affected persons has therefore collected questions and commissioned a legal expert opinion. We want to summarise the results of this in this newsletter focus.

#### GENERAL

The Code of Criminal Procedure (StPO) does not recognise people with disabilities. If compensation for disadvantages is to be achieved for PWDs, this must be derived from higher laws. The following are particularly important in this regard:

- The United Nations Convention on the Rights of Persons with Disabilities (UN CRPD)
- and the German Basic Law (GG), especially the principle of equal treatment

This derivation makes things more difficult. It is complicated to argue and, absurdly, a higher level of legislation means that directives can be ignored more easily. They are more vague because they (could) apply to a large number of cases.

Another option is to refer to court judgements that have already been handed down on the subject. However, these are not available for every case, and they are not always favourable to us. Step by step, we will now discuss the legal opinion's answers to questions posed by those affected.

## IN THE ACTION

The legal assessment of how police officers and other law enforcement officers deal with PWDs during actions depends very much on the individual case. A legal assessment is very rarely carried out, and hardly ever with full knowledge of the events. The Basic Law's principle of equality applies: the police may not treat members of a group of people who are basically the same (e.g. participants in a blockade) differently. However, this principle is severely restricted in current case law: Unequal treatment is permitted on the basis of a "comprehensible reason", but must not be arbitrary. Physical inequalities can be sufficient for this. As a result, it always depends on the individual case and the assessment of the reviewing court. In addition, it is to be expected that the police will present special measures for PWDs as being in their favour.

A common practical problem is the question of whether paramedics are allowed to remove PWDs from their wheelchairs to make it easier for the police to evacuate them. As paramedics (unlike doctors) are not a liberal profession, it is more difficult for them to refuse orders from the police. They are also generally qualified to transport people between two wheelchairs. However, from the point of view of the prohibition of discrimination, this measure must be specially justified by the police; a mere facilitation of work should not be sufficient for this. In practice, this is also a case-by-case decision by the reviewing court. The evidence of the differences between the wheelchairs, the duration of the transfer and the actual difficulties that would have been involved in removing the special wheelchair will be of importance.

## IN CUSTODY

### *Joint accommodation with assistance persons*

In principle, only people who fulfil the requirements for deprivation of liberty may be taken into custody. In many cases, this will not apply to purely accompanying assistance. There is no provision for voluntary accompaniment into custody. However, if both persons are taken into custody, joint accommodation may well be required. This is made more difficult by the refusal to provide personal details, which makes it impossible to prove the degree of disability, for example. Furthermore, there is no secure legal basis for this attempt.

### *Right to specialised medical treatment in custody*

Unfortunately, there is no legal entitlement to specialist medical treatment in custody. In practice, a medical opinion that a PWD believes is not professional can only be challenged in court afterwards.

### *Transport to the detention centre*

From the point of view of equal treatment, transport in a vehicle adapted to the physical needs of a PWD should be appropriate. As already mentioned above, a mere facilitation of the police's work is not sufficient as a counter-argument in the opinion of the legal opinion. Here too, however, there are no known practical examples in which this has been confirmed by the courts.

### *Disability-friendly treatment in prisons*

The UN CRPD stipulates training for police and prison staff on the special situation of PWD. Many prisons now have accessible detention rooms. This is not usually the case in police custody, however, where less stringent requirements apply. If this occurs, detention can become disproportionate in its nature and manner. This has already been confirmed by the European Court of Human Rights in an individual case.

During a deprivation of liberty, applications can be made on this basis to end the detention or to transfer the person concerned to detention rooms suitable for the disabled. In retrospect, the unlawfulness of detention can be established through an administrative complaint. In addition, a report can be made to the National Agency for the Prevention of Torture. It is responsible for inspecting detention centres nationwide, and information can influence the selection of random samples.

### *Tools used by PWD in the detention centre*

As a general rule, all objects that have probative value or are likely to cause injury to themselves or others are seized by staff in custody. In most cases, this is simply everything a person has with them. This is also likely to frequently affect aids belonging to PWD. This is countered by the guarantee of human dignity in the Basic Law. In some cases, there are relevant derivations of this for PWD in the custody regulations of the federal states - it is worth reading up on this.

In practice, people in detention are very much at the mercy of the guards. We can try to make a good case on the spot and possibly have the illegality established later in order to influence the behaviour of the staff in future cases. If an item of equipment is damaged or destroyed during the seizure, it is very likely that the person concerned will be entitled to compensation. This is much more difficult in the event of damage during the police operation.

## CRIMINAL PROCEEDINGS AND PUNISHMENT

### *Compulsory attendance at court hearings*

In most court proceedings, the accused person is obliged to appear in person. Travelling to court hearings is often much more time-consuming for PWD. Unfortunately, there is no loophole to avoid this obligation to attend. The place of jurisdiction (i.e. the place where a trial takes place) is based, among other things, on the place of residence of the defendant. In most cases, however, the default venue is the place where the offence is alleged to have taken place. A transfer to the place of jurisdiction at the place of residence can be applied for and justified with the obstacle to travelling, but the outcome is uncertain.

Indigent PWDs can apply (also in advance) to have their travel and accommodation costs covered. If higher costs are incurred due to the effects of the disability, these must be justified. Non-indigent PWDs could try to obtain reimbursement on the basis of Art. 13 of the UN CRPD (equal access to the justice system), but there are no examples of this.

### *Communication*

Defendants must be put in a position in court (also in correspondence) to understand the content and to be understood themselves. Many variants are conceivable, depending on the type of disability. Sections 186 and 191a of the Courts Constitution Act (GVG) are relevant here. These cover very different types of hearing, speech and visual impairment. Those affected can therefore choose for

themselves whether they would like to use technical aids or a "translator". In this right to choose, the court only has a limited scope for refusal, e.g. if the translation is deemed insufficient or disproportionately costly.

The court must provide technical aids for this purpose. A person can be freely chosen as a communication mediator. It is possible for this person to be sworn in by the court. The form of communication can be chosen by the person concerned and the translator.

Blind and visually impaired persons may submit documents in a form that is perceptible to them; conversely, documents must be made accessible to them in this form. They are obliged to inform the court of the form of communication at the beginning of the proceedings.

The accessibility of visual content in the main hearing (e.g. videos that are used as evidence) is unfortunately not regulated in the GVG. For special measures, an application would have to be made at this point with reference to the UN CRPD. Cognitive disabilities are also not covered and must be applied for via the UN CRPD. In the absence of precise legal regulation, the decision here is at the discretion of the court.

The costs of any communication mediation are borne by the state.

### *Public defence*

Under certain conditions, defendants in criminal proceedings are entitled to a public defence. This means that a lawyer is first paid by the state. Only in the event of a conviction does the accused person have to repay the money. The requirements are regulated in §140 StPO. People with visual, speech or hearing impairments are always entitled to a public defence upon request. However, not every disability is recognised as such by the courts. There is therefore room for arbitrariness here. On the other hand, there is a risk that PWDs will be assigned duty lawyers against their will under this standard - e.g. if the court deems them unable to defend themselves.

### *Procedure of the main hearing*

Unfortunately, there is a real risk in German court buildings that PWDs who are dependent on wheelchairs, for example, cannot stand next to their defence due to structural defects in the courtroom or are otherwise disadvantageously positioned. Unfortunately, if the court does not remedy this situation, no complaint can be made during the proceedings. Only after a conviction can the grievance be cited as a ground for appeal. However, the thresholds for a successful appeal are quite high.

For many PWD, it is also important that their personal assistant is allowed to be near them at all times. However, only those involved in the proceedings are actually allowed to sit in the dock. If the assistant is also a communication mediator, their presence is justified in any case. In any other case, this would have to be argued again on the basis of Article 13 of the UN CRPD. Unfortunately, there is no concrete legal basis.

If PWDs need to lie down (or similar aids) or interrupt the hearing in order to be physically able to follow it, the UN CRPD must also be invoked here. Medical certificates are helpful here.

It is also important to note that legal carers of defendants have no special rights in criminal proceedings and must attend as spectators.

### *Pre-trial detention and criminal detention*

Prison stays can be divided into two categories: Pre-trial detention (before the end of a main hearing, to secure proceedings) and criminal detention (after a conviction, serving the actual sentence). According to Section 433 of the Code of Criminal Procedure, criminal detention can be postponed if the facilities in the prison are incompatible with the convicted person's state of health. This can be checked in the case of physical disabilities. Unfortunately, there is no corresponding regulation for pre-trial detention. Disproportionality can be argued, but this is much more difficult.

## CONCLUSION

This newsletter focus is only a summary of the underlying legal opinion. If you are interested in the entire report, please write to us at: [antirrr@riseup.net](mailto:antirrr@riseup.net)