

DISABLED PERSONS IN THE EYES OF THE LAW DURING COVID-19 PANDEMIC. DIFFERENCES BETWEEN THE AMERICAN AND THE ARGENTINIAN LEGAL SYSTEM FOR DISABILITY.

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Legal Opinion

Preface

As reported by the WHO, around 15 percent of the world's population, or an estimated one billion people live with some kind of disability status or impairment. People with disabilities are the world's largest minority. These data lay bare how close we are to this issue in our daily lives. Legal protection is mandatory and indispensable, but what happened in the recent past, (while the world was confined to their inner shelters with this vulnerable group)? During the pandemic, people mostly felt anxiety, anguish, and stress. But to be confined was harder for disabled people. Just a rapid glance at those recent times.

The American CDC reports “up to 1 in 4 (some 27 percent of) adults in the United States have some type of disability.” So, it is a significant topic, considering that such number of disabled people is divided into 12.1% for mobility impairments (serious difficulty walking or climbing stairs), 12.8% for cognitive impairment (serious difficulty concentrating, remembering, or making decisions), 7.2% for independent living difficulties, 6.1% with hearing difficulties, 4.8% with vision impairment, and 3.6% with self-care limitations (difficulty dressing or bathing).

However, what happened when in March 2020 the pandemic emergency showed up/broke out in our lives? We all know now that an unknown virus

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spread all over the world, passing through international boundaries very quickly and in a non-visible form.

The declarations for Covid-19-related restrictions began at the end of 2019, when the outbreak unfolded a public health emergency. The media freaked out the audience with high-impact, disturbing news, in a highly competitive rush rally for exposing/presenting/showing the disaster. A friction between liberty and health began. It is a well-known fact that people with disability were openly exposed like the rest of the population, but with fewer tools to communicate their needs. The regulations were (long) overdue and should/had to be updated.

Therefore, disabled patients were mostly disoriented and claiming for assistance, trying to understand why their therapists suddenly vanished. While the vaccines were developing, a negative Covid-19 test was mandatory for travelling, among other actions. The same process took place in the United States and Argentina, both affected by the virus spread.

For an instant, we can figure out that a disabled person needs a mechanical ventilator, meanwhile elsewhere, a neighbor is waiting in silence. Then we face an unsolved dilemma. Both lives matter, notwithstanding whether they are disabled or not.

United States' regulatory framework (the ADA)

The Americans with Disabilities Act (ADA) defines a disabled person “as a person who has a physical or mental impairment that limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all the impairments that are covered.” Does impairment mean “unqualified for”? It depends. But the truth is that, indeed, facts show ability or function being weakened or damaged. Disabled people or crippled, always face the leanings of the laws. Quite an interesting point is that the definition implies whom is/can be perceived by others as having such an impairment. So, the spectrum looks wide open. Although these allegedly privileges for some looks/perspectives

could rebalance the inequity, the daily life of people who have hearing, vision, or speech disabilities needs special support.

Since the ADA does not have any specific list of disability conditions, those gaps/loopholes are to be filled with the Convention on the Rights of Persons with Disabilities (CRPD) which is an international treaty that was inspired by the U.S. leadership in recognizing the rights of people with disabilities. The U.S. signed the CRPD in 2009.

Argentina's legal regulation.

At the antipodal part of the American continent, the Argentine Congress enacted the Act/law that proposed the incorporation of the Convention into the Constitution in 2014. Nowadays, the CRPD is/forms part of the Argentinian domestic/national law and is enforced by local/national judges in the courts.

On the other hand, the Argentine Civil and Commercial Code in its section 48, establishes/provides that a person has a disability, when he suffers from a permanent or prolonged functional disorder, whether physical or mental, which, in relation to their age and social environment, implies considerable disadvantages for his family and social integration, education or work. The legal action of making a petition to the courts claiming for a judicial decision about the disabled person, is only reserved to the spouse, cohabitant, and ascendants and/or descendants. Therefore, anyone in this list can claim for them.

During that time, Argentina was on the alert too. The Presidential Executive Order (Decree) established a mandatory lockdown of the Argentinian population, whether with disabilities or not. The emergency rule had several renewals/extensions during 2020 and 2021. But this kind of legal rule specially affected the people with autism, for example. In Argentina, autism is considered a mental disability. Two types of rights went into apparent collision: freedom and health, but to protect both, an exemption was settled. The spreading sanitary problem and the legal proceedings were crossed claims uneasily solved/settled by the Courts.

The healthcare system was abruptly cut off and long-term care facilities were closed (for an undefined period). The Argentinian Public Act No. 24,901 (1997) establishes a system of basic benefits of comprehensive care in favor of people with disabilities, in accordance with the National Constitution. But the pandemic admitted by the WHO, was knocking on the door. The virus was getting into the territory through passengers coming from abroad. No country could properly handle such a scenario, characterized by fear and uncertainty. Face masks were awkward for disabled people, but their use was compulsory. And a real problem for those people who needed to read the lips to understand each other, but there was no exception. The right to travel across the country was curtailed and just the essential staff was/were allowed to attend their jobs. The people with disabilities suffered some emotional consequences, as they felt isolated and overwhelmed by stress. The whole daily routine was suddenly modified without prior notice. And the enforcement of the bunch of regulatory laws seemed to stress the minds of ordinary people too.

Routes, public parks, medical appointments were all closed off, which were all measures alleged to protect the public health. Whereas recognition of health was a top priority for the disabled people, for example a very constrained permission for walking about five hundred mts round the home was granted.

Those people in general, declared as medical staff or not, who must assist others with disabilities could get out of their houses and pass through the streets trying to accomplish their mission. They had the right (a specific brief authorization) for mobilization from their own home to the residence of the people with disabilities. They could not take any hidden detours for other purposes. The shortage of support workers and low wages in comparison with the unknown risks was also floating in the social mood. Exhausted between regulations, non-stop efforts and self-care fell apart, finally forcing many to leave the healthcare profession altogether. How can we prevent a new experience like this? Emphasizing every aspect of how the aid and support for people with disabilities living in a community should

be conceived and preview a balance between the Organic Law and the needs described at Sanitary Laws & Regulations.

Disabled people are mostly helpless without adequate legal support and protection of the laws. The first step to take is towards equal protection under the laws in both countries.

The Argentine Republic signed several International Treaties, today incorporated into the National Constitution. One of them, the Convention on the Rights of Persons with Disabilities, says that our country must take actions in defense of the disabled people. Literally, Article 11 indeed expresses that: “States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters”.

Furthermore, Article 12 added: “States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.” And they recognize that persons with disabilities shall enjoy legal capacity on an equal basis with others in all aspects of life. In accordance with that rule, the State must provide different safeguards to affect, to the least possible extent, the person’s rights, and interests. And equal access to healthcare is the key to the vault. No one should be deprived of living a normal life, just like anybody else.

During the pandemic, some employers during the pandemic employers do not hesitate to fire workers with disabilities. How many additional anguishes can make to be the first in the list? It is not just unfair, besides increase the number of practical problems to be solved immediately. Some disabled people get a close help, but others not. No everyone is ready for understand properly how to facilitate the diary life of an impaired one. The legal regulations sometimes collide with practical accessibility. So, the environment must be modified relativity fast and in a social context dynamic and inside an unseen thread of sanitary risks. Some companies adapted their remote-control labor systems quickly enough, but not all. For a common

disabled person to get a cab or bus was unexpectedly complex and more expensive. So, the salary was affected because of a scenario of restrictions. Usually, the disabled people are encouraged to face different obstacles. Some disabled people need a tailored environment to survive, could be the classroom of the educational system, a bus, a handicapped ramp, or a software able to read and reproduce in loudspeaker the text.

We could imagine that a think-tank of expertise with energy were prepared for responding to the challenge. Addressing their efforts to figure out problems to be solved speedy. However, it was necessary in the middle of the process, for disabled people look for themselves, alone or through non-governmental organizations, a way out. These people backed by its urgent and essential confront the fear and struggle for surviving. According to the Argentinian rules the parents, relatives or themselves must show the accreditation of the disability to the law enforcement is required, just for a walk around the neighborhood.

So before we hit the curb, was mandatory pick up different extra elements for disabled people: the personal belongings, identification, accreditation of the disability by an official document, the mask (at the beginning, were designed unable to read lips for other people, complexing the situation for the deaf-mute for example) and the inevitable discomfort of carrying these stuff together simply to go shopping or a medical appointment, mostly very difficult to planned.

All these observations are not taking into consideration the care of those admitted to rehabilitation institutes, clinics, hospitals, or homes. People with cognitive or mental disabilities, with particular care, also require a work team. Caregivers also exposed to the virus and forced to resolve daily challenges if they became ill, left some of the people in a virtual state of helplessness. The disorientation and lack of knowledge on both sides of the health system, regarding which protocols or standards to apply, meant that when in doubt, the service was restricted to the maximum.

Before the early trials of Covid-19 vaccine, the fear and doubts got into the people minds, with or without disability.

Among the disabled people many questions were unanswered for a long time. Were risky to get out or not? In the case of to be infected is that true the media news. Some pics were especially harder of processing and to conceive a disabled person without a caregiver, isolated and with no emotional containment was terrifying. No one wanted to be in that spot. A child without its loved ones sent to an intensive care unit, was a circumstance that needed to be strongly avoided.

The spectrum of disabled people is vastly different. The attention is personalized, and human resources must be particularly prepared, trying to maintain a normal rhythm to the extent permitted. Body distancing, hand washing, empathy through short phrases, with empathy, are actions that have become essential. The understanding of health agents and vice versa was essential to maintain emotional balance and endure until the vaccine allowed gradual opening. Humanity, for the first time, faced a problem that paralyzed it in unexpected areas. Argentina was no exception and the set of care rules included disabled people with signs of hospitalization due to Covid-19.

Argentine medical staff received instructions from the National Ministry of Health, but also from the sanitary authorities of each jurisdiction. In some places the presence of family members or crossing state lines was prohibited. Traumatic situations were experienced in the face of uncertainty. The lack of certainty makes a disabled person particularly vulnerable, who did not know what would become of them. His health, his social, family, emotional, and financial environment were in crisis. It was not a personal situation; it was a global crisis.

Such an extended quarantine strongly affected disabled people with prolonged treatments. Progress is usually slow and the abrupt closure in March 2020 brought about the worsening of various pathologies, regardless of the type of disability. Whether it was motor disability, mental, or others, the consequences were severe. In the specific case of people on the autism spectrum, the breakdown in the treatment routines of speech therapy, kinesiology, early stimulation, psychology, occupational therapy, was serious. There is an expectation of disabled people to see their caregivers,

who over time empathize with them, miss them, and create bonds of love and protection.

The confinement of disabled people put stress on families and on the system, a challenge unthinkable before. Some caregivers or educators tried to communicate through technological means with applications such as Zoom, Meet or WhatsApp calls. Not being able to access social spaces also triggered feelings of anguish, crying and the conversion of parents or family members into improvised therapists or teachers, without the necessary tools. The closure of therapeutic centers by order of the federal government and confinement to places, in some cases was an intense challenge. In the cases of people with disruptive behaviors, the impact was greater and health services should have provided some type of parental support to the extent of their possibilities.

In the case of people with mental disabilities, new learning figures appeared, such as pictograms with drawings of facial masks, etc.

Let us think that it was necessary to explain to a person with autism that it is an invisible virus through a graphic representation, such as a pictogram, usually used for other purposes. People with neuro-sensory diversity had to reconfigure themselves in small spaces and coexist with people who, not in all cases, completely understood the underlying problem.

Children with disabilities stopped socializing in public places, such as parks or playgrounds. Therefore, the perception of the other, already with difficulties, adds another hurdle. The move to virtuality was the approach towards the disorientation of disabled people and their entire environment. In many cases, the overload of tensions and the lack of access to greater technological resources, whether due to insufficient income and poverty or lack of education, and with a solution horizon of 2 years ahead, would assess everyone's strength.

Some disabled people rejected face masks or were reluctant to take repetitive hygiene measures, which were vital for themselves and their environment.

Disabled people with motor difficulties began to be stimulated remotely, through video calls. Which was a completely new form of therapeutic

session. In chilly weather it seemed like an opportunity not to take risks and greater comfort, but human beings are designed to socialize and contact with others is an irreplaceable part of our development as human beings integrated within the same social body.

Final note

The chance of an unexpected crisis is always real, so the emergency service must provide sustained support. The laws should be adjusted in calm times, looking forward in advance. In any case removing the barriers for a process of awareness prior to applying a treatment to a patient with some sort of difficulties. If the person does not understand the whole picture enough, help them with empathy, beyond the law.

Today, most of the nations have dropped Covid-related restrictions, to reach the goal of going back to pre-pandemic life. Meanwhile, the number of people with mental health diseases is increasing steadily. Apparently, many problems remain unsolved. A staggering number of new patients are attending to the health care aide facilities financed by both the State and the private sector. In Argentina, four subsystems of healthcare can respond for the impaired people. Major awareness raising about these matters is required, such as preventing the isolation of people just like us, around the world. Disabled people's lives matter because of their value to achieve an integrated society. Laws derive from the beliefs of what is fair or not. When we are ensuring access for the sake of equality, there emerges a building of rules based on true and solid columns.

Overall, there are long-lasting ties between both countries, so a common protocol for facilitating the attention of disabled people could mean an improvement in shared learning.