

# **ENABLING JUSTICE**

China's Laws on Disability Rights in Transition

by

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## Abstract

This research paper attempts to investigate the current status, issues and remedies relating to China's disability rights laws and legislation, viewed from the perspective of persons with disabilities. Since the PRC ratified the CRPD in 2008, the country's progress towards guaranteeing disabled people's rights has gradually become more consistent with international practice. In recent years the proliferation of laws and statutes, and the heightened rights-consciousness of persons with disabilities themselves, has had a profound impact on standards of disability rights protection. But disabled people continue to face widespread rights violations. China's system of disability-related law is already fairly comprehensive, but in general it emphasizes welfare rather than rights. National disability legislation tends to focus on broad principles, is rather abstract and lacks detail for practical implementation, while lower-level statutes might offer stronger guidance; prescribed legal responsibilities are rarely backed up by enforceable sanctions; and some regulation relating to, for example, physical examinations constitute forms of direct discrimination. It should, however, be acknowledged that in recent years some new legislation more closely reflects the spirit and principles of the CRPD.

When analyzing the difficulties of rights protection we find that some disabled people do not accept their disabled identity and are therefore unwilling to request reasonable adjustments. Those who are willing to take action to protect their rights are often subject to immense external pressure. Some disabled persons who seek justice through the courts fail due to lack of clear, legally-valid evidence. So, when considering remedies, we should start by raising disabled people's rights awareness. This process - conducted through one-on-one contact, group trainings etc.- should be initiated by disabled persons who themselves have a profound knowledge of the law. It should aim to challenge the medical model of disability and verify the positive role of law and litigation. Furthermore, it should emphasize the vital role that individual cases, in conjunction with various stakeholders, can play in advancing legal reform. Litigants can be flexible in their use of mediation or other measures. But some requirements under current law (such as physical examinations, discriminatory definitions and legal consequences) need to be revised.

# Chapter 1: Introduction

## 1. Questions of enquiry

The degree to which disabled people's rights are respected is an indication of the state of a country's legal system. Whether or not disabled persons' rights receive protection on an equal basis with others, can reflect the level of protection of the human rights of all persons. So in what ways do people with disabilities in Mainland China face discrimination or other challenges to their equal rights? What remedies do persons with disabilities use when they experience rights violations? What factors cause disabled individuals to take one course of action or another in seeking protection of their rights? For those who choose to take the path of litigation, which laws or regulations can give them the best support? How effective is legal aid? I am sure that these are all questions of concern both to myself, as a legal professional with a visual disability, as well as to all readers who are concerned about the protection of disabled people's rights in China.

Aside from the needs of individual persons with disabilities, what laws and regulations are best suited to directly or indirectly protect disabled persons' rights within the general framework of China's current legal system? What is the real impact of disability rights cases and public interest litigation? What factors affect the outcome of any one case? What roles do lawyers, judges, CDPF officials, journalists and other stakeholders play? How can we improve standards of rights protection within China's current legal framework? These broad questions, like those matters relating to individual rights, have inspired my own curiosity and this research.

## 2. Research background

China's legal system has been constructed over the past forty years, ever since the country began its policy of "Reform and Opening Up". Twenty years ago China's ruling Communist Party announced its strategy of "Rule by Law" and in 2004 it wrote into the Constitution that "the State guarantees and protects human rights". In the area of disability rights, China's ratification of the CRPD in 2008 has been followed by evident changes in the country's laws on disability and an increasing number of new laws and regulations have appeared at different levels. For example, in 2008, China's Law on the Protection of Disabled Persons (LPDP), first promulgated in 2009, was thoroughly revised; in 2013 the Mental Health Law was passed; the State Council promulgated "Regulations on Disabled Persons' Employment" and "Regulations on the Construction of Barrier-free Environments" in 2007 and 2012 respectively; and "Regulations on the Education of Persons with Disabilities" and "Regulations on Disability Prevention and Rehabilitation of Disabled Persons" were passed in early 2017. The Ministry of Education, Bureau of Civil Aviation and other departments passed statutes relating to disability within their own areas of responsibility. "Discrimination based on disability", "reasonable accommodation" and other concepts started to appear in the wording of China's laws. But in marked contrast to this apparent plethora of legal reform, the actual prospect of disability rights has remained rather bleak, China's record on disability law remains quite poor internationally and there are still major inconsistencies with the CRPD.

Official Chinese statistics currently put the number of disabled people at around 85 million, but according to data from court cases and media reports, this huge population is still subject to direct or indirect, overt or covert, systemic or non-systemic discrimination in education, employment, banking, transport, mobility and other areas of life. There are still numerous barriers to social inclusion and equal participation. For example, most persons with a more severe disability are still excluded from mainstream education and most persons with disabilities are still barred from taking the civil service examinations. People with disabilities might face trivial discrimination such as exclusion from cinemas, to more severe discrimination such as refusal to register their marriage. Faced with these violations more and more persons with disabilities are now willing to take legal action. But litigation around disability rights in China is still hampered by problems such as lack of clear evidence, lack of judicial independence, insufficient support of lawyers and poor public understanding, with the result that mediation is more common than adjudication and successful litigation is rather rare. However, at the same time the term "public interest litigation"

has now appeared in the wording of the Civil Litigation Law. Public interest litigation is now an important tool of disability rights advocacy.

The amount of research on legal protection of disabled persons' rights in China has increased rapidly and adheres to two main approaches. The first includes general discourses on the LPDP and other disability-related legislation. This approach often lacks systematic comparison with the CRPD or other international instruments, neither does it view legislation and legal practice from a rights perspective. The second approach tends to focus on certain aspects of disabled people's lives - such as education or employment - in order to identify changes in policy or law, describe a particular model, or make specific recommendations. This research provides important reference for this paper, but it is mostly conducted by non-disabled researchers who naturally lack the experience of persons with disabilities. Most broad-based legal research fails to incorporate disabled people's direct experience, assuming that disability-related law belongs to the fields of sheltered employment, the disability employment levy, special education and other welfare issues.

### **3. Aims of the research**

There were two overall objectives to this research:

1. To identify the main problems which currently exist in China's system of legal rights protection for persons with disabilities;
2. To indicate ways to improve standards of legal rights protection for persons with disabilities.

The first aim includes identification of the main legal documents within China's legal system relating to legal rights protection for disabled persons, including which of these documents accord fairly closely with the principles and spirit of the CRPD, which can be used directly in resolving rights violations, which documents require revision and in which specific areas, and which regulations constitute direct or indirect discrimination of persons with disabilities.

Apart from analyzing laws and regulations in their static form, this research is also concerned with their active effects when persons with disabilities are faced with discrimination and rights violations. It attempts to analyze the kinds of measures that disabled persons resort to when their legal rights are violated, what results recourse to law produces, and why there is variation in these results.

In realizing its second aim, the research first gives an overview of prevailing conditions as a basis for suggesting strategies and analyzing the actions that disabled persons, legal professionals and other stakeholders can adopt. It is hoped that this experiential approach will give the research more practical value.

### **4. Methodology**

This paper is primarily the result of a combination of desk research and fieldwork and includes the following methods:

#### **A. Archival research – collection and analysis of:**

Formal documents on disability-related policies, laws, administrative regulations, local regulations etc. currently active in China. I mainly obtained these through China Law Info (北大法宝), Chinese government websites, Baidu and other search engines, and my own stored collection of legal documents. Overall my focus has been on the main disability-specific laws and regulations, such as the LDPD and "Regulations on the Employment of Persons with Disabilities", with occasional reference to other regulations which might relate to the disabled people's rights. In this I have mainly tried to identify content relating to disabled persons' rights (non-discrimination, legal capacity, reasonable accommodation etc.); content dealing with welfare and rehabilitation is not the primary focus of this research. In this context it should be pointed out that during the course of my research several key new pieces of legislation appeared on the statute books,

including the “Regulations on Education for Persons with Disabilities”, “Regulations on the Prevention of Disability and Rehabilitation of Persons with Disabilities” (both passed in January 2017) and the revised “General Principles of Civil Law” (passed in March 2017). These are also important subjects of this research.

The main documents regarding law and regulations that I looked at were:

- (1) Court verdicts on cases of disability rights, mainly obtained from online databases of court adjudications;
- (2) Academic research papers relating to disability rights and the legal system in China, mainly derived from public libraries and online academic databases;
- (3) Public information about cases, statistics etc. made available by courts, legal affairs bureaus, the CDPF etc.;
- (4) Relevant case information and statistics made available by NGOs such as Yi Ren Ping, One Plus One, Zhi Cheng and several law firms;
- (5) Publicity on disability rights-related cases appearing in the Chinese media.

I also conducted interviews with:

- (1) Key participants in disability rights cases (21 persons)
- (2) Disabled individuals who experienced discrimination but did not resort to legal action (15 persons)
- (3) Lawyers who represented disability rights cases (11 persons)
- (4) Officials of legal affairs bureaus or CDPF offices responsible for disabled people’s rights protection (3 persons)
- (5) NGO staff or law school teachers and students who have given support in relation to disability rights protection (9 persons)
- (6) Journalists who have reported on disability rights cases (6 persons)

## **B. Participant and non-participant observation**

During the course of this research I followed three specific in-depth cases of disability rights protection (i.e. a visually impaired person suing the 12306 website about inaccessibility of the verification code; a visually impaired person suing Guangfa Bank for refusal to issue a credit card; and a visually impaired person suing the Ministry of Education over lack of access to Braille exam papers). Throughout these cases I kept notes and carefully analyzed the thoughts, actions and strategies of the various parties at different times. During this time I was also interning in a law firm and I represented a public interest case involving a wheelchair user who was suing an airline for refusing to let him board. This case reached a successful conclusion. It gave me the opportunity to participate fully in the whole legal process, share my experience and consider the reasons for each party’s actions and decisions.

## **Chapter 2: China’s system of disability law**

### **1. An Overview of China's System of Disability Law**

The source of law today in China mainly takes the form of statutes. Legal precedent and customs, etc. exist only as an unofficial source of law. China's legal system can be divided into five levels. The first level is the constitution, occupying the highest position in the legal system; the second level is the law enacted by the National People's Congress and the Standing Committee, and is universally binding; on the third level are the administrative regulations enacted by the State Council, implemented nationally but less effective than law; on the fourth level are local laws and regulations that are universally binding in administrative districts; on the fifth level are rules and regulations. These can be divided into rules and regulations formulated by the State Council's ministries and commissions and local governments and can be referred to during court adjudications.

The parts related to disability in the Constitution are stipulated in Chapter 1: the basic rights and duties of citizens. The third paragraph of Article 45 stipulates that: the state and society help to arrange the work, life and education of blind, deaf, dumb and other disabled citizens.

Apart from the Constitution, there are national levels of laws and administrative regulations that are universally binding. The system of disability law consists mainly of one law and four administrative regulations, in short form “One law, four regulations”.

At the legal level, People's Republic of China Law on the Protection of Disabled Persons (LPDP) was originally formulated in 1990 and was fully revised before the CRPD took effect in 2008. The LPDP comprises nine chapters and 68 articles covering rehabilitation, education, work and employment, cultural life, social security and accessibility. It covers all aspects of life for disabled people. The content and spirit of the LPDP may be regarded as embodying the basic approach of the existing law towards disability rights. Other laws and regulations in the LPDP system can be seen as specific implementations of detailed aspects of the system of disability law.

At the administrative and regulatory level, the State Council promulgated or amended the "Regulation on the Employment of the Disabled", the "Regulation on the Construction of Barrier-Free Environments", the "Regulation on the Education of Persons with Disabilities", and the "Regulation on Disability Prevention and Rehabilitation" in 2007, 2012 and early this year. Respectively, these are the specific provisions of the relevant sections of the LPDP at the level of implementation. The "Regulation on the Employment of the Disabled" stipulates the three guiding principles of centralized employment, proportionate employment and individual employment, and specifically stipulates the minimum proportion of proportionate employment; those who fail to meet the required proportion have to pay into the employment guarantee fund for people with disabilities; the "Regulation on the Construction of Barrier-free Environments" provides an institutional framework at macro level for building a barrier-free physical environment and information network environment. The "Regulation of the Education of Persons with Disabilities" was adopted in January 2017 following the revision of the 1994 version of the old Regulation, and establishes priorities for the basic principles for developing inclusive education.

As regards departmental regulations, they are also universally binding throughout the country. Some ministries under the State Council have formulated their own disability-related documents within their respective professional fields, for example, the "Administrative Measures on the Air Transport of Persons with Disabilities" formulated by Air China, and the "Circular on Strengthening Banking Financial Institutions" Handling of Financial Services for Persons with Disabilities" formulated by the China Banking Regulatory Commission (CBRC). Many of these provisions are concrete and constructive, and some have become the basis on which people with disabilities often invoke their rights.

Local regulations and local government regulations that are implemented only in specific administrative districts are not the focus of this study. However, some typical provisions or provisions closely related to the outcomes of individual cases will appear in this report.

In general, the current legal system in China tends to be both concentrated and specific in the way it approaches particular areas of concern. The addition of a total of five national laws or regulations addressing different aspects of the social life of people with disabilities in the "One Law and Four Regulations" is large in comparison with most countries that have only one or two special disability laws. Legislators have attempted to come up with specific legal documents to define a certain area of social life for persons with disabilities, rather than making adjustments for disabled people's affairs through the prevailing education or labour laws. It is evident that legislators tend to regard disabled people as a special group that needs special treatment. This feature can also be corroborated by the establishment of government agencies. All levels of the

China Disabled People's Federation (CDPF), from central government to local government, are actually public departments responsible for disability affairs at all levels of government. Furthermore, each level of the CDPF has offices for dealing with education, employment and rights protection, rather than a disability affairs office being set up at each level of education, employment and other departments and directly handling disability-related matters within the scope of their work.

It should be especially pointed out that China is a founding member of the UN Convention on the Rights of Persons with Disabilities (CRPD) and researchers often compare domestic laws with the corresponding provisions of the CRPD. However, according to Chinese law, only civil cases in an international convention such as the United Nations Convention on Contracts for the International Sale of Goods (CISG) can be directly applied in domestic judicial adjudication. Other international conventions cannot be directly applied in China but only through legislators who translate the contents of a convention into domestic law. They cannot use current international conventions such as the CRPD, especially ones that have not yet been translated into domestic law, as the formal source for China's system of disability law.

## 2. Regulatory system and welfare

The system of disability law in China has a clear orientation towards welfare. In most cases, disabled people are regarded as objects of welfare rather than subjects with rights. The laws designed for the rights and duties of persons with disabilities are more focused on obtaining material or medical assistance from the state or society than on removing discrimination and barriers to equal participation in social life. The only provision in the Constitution which is directly related to disability states that "the state and society help organize the work, life and education of blind, deaf, dumb and other disabled citizens". This distinctive feature appears in many parts of the legal system.

This system of welfare-oriented regulations first appears in the name and definition of disability. All Chinese legal documents and official discourse use the word *canjiren* 残疾人. *Canji* 残疾 has the dual meaning of "incomplete" and "diseased". Basically, it never removed itself from the ancient Chinese term *canjizhe* 废疾者 meaning "useless and diseased person". Thus the LPDP defines a person with a disability as "a person who is psychologically, physiologically or physically incapacitated or functions abnormally, and who has partially or wholly lost the ability to engage normally in certain activities."

This definition unilaterally stresses that a disabled person's own flaw is the only reason affecting his or her participation in social life. People with disabilities are labelled as deviating from the norm and requiring correction. This reflects the medical model concept of disability in which disability has always been treated as an aspect of social welfare, charity, healthcare or guardianship legislation. Disabled people are seen as deserving of sympathy, assistance and solicitude. It may be said that there is a natural affinity between the medical model concept of disability and the welfare-oriented legislative model.

The orientation towards welfare in the legislative model is also manifested in many specific institutional arrangements. For example, documents in the "Regulation on the Employment of the Disabled" focus on providing support for people with disabilities and emphasize the sanctions imposed on enterprises that employ less than the legal proportion of persons with disabilities. This extends far beyond discrimination against employment of disabled persons and provision of reasonable accommodation. The general attitude toward disability employment legislation appears to be to ensure "income for disabled people" rather than guaranteeing their own choices and equality of employment.

Admittedly, effective implementation of welfare-oriented regulations would be a positive sign of a guarantee of basic living and maintenance of income levels of disabled people. Even the CRPD



also acknowledges that welfare is a part of rights. For example, its Article 28 requires that state signatories recognize that persons with disabilities have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing and the continuous improvement of living conditions; however, the premise of the CRPD's provisions on adequate living is not based on discrimination against disability. A one-sided emphasis on the well-being of disabled people, especially in view of the dominant position occupied by the medical model of disability, can easily lead to a disregard for disabled people's autonomy and advocacy of their rights. In particular, the awareness of disability in society as a whole is still very limited and may reinforce the public stereotype of disabled people as pitiable, incapable and burdensome.

### **3. Regulations based on slogans**

Legal standards are basically mandatory. This requires that they provide fixed guidelines and they should be followed in order to abide by the law. Failure to do so will constitute an offence. However, China's system of disability is full of a large number of vague articles that do not specify the specific rights and obligations of the subject, but only make certain proposals or promises. The law, in fact, is reduced to principles or slogans.

Such phenomena are prominent in the formulation of certain basic systems related to disability rights. For example, the first two Articles in the chapter on employment of the LDPD stipulate that the state shall guarantee the right of persons with disabilities to work: "People's governments at all levels should make overall plans for the employment of people with disabilities and create conditions for their employment" (Article 30), and "employment for disabled people should put into practice the principle of combining collective and individual employment, should adopt preferential policies and supportive protection measures, and gradually popularize, stabilize and rationalize the employment of disabled persons through multiple channels, multiple levels and multiple forms" (Article 31). Such provisions do not actually endow disabled people with any specific right to work and employment nor do they impose any mandatory obligations on government or employers and they scarcely have the function of guaranteeing equal employment for persons with disabilities. Many of the articles in the law about barrier-free environments contain expressions such as "the state and society should take measures to gradually improve barrier-free facilities, promote exchange of information and create a barrier-free environment for the equal participation of persons with disabilities in social life", "people's governments at all levels and relevant departments shall, according to the provisions of the state's construction of barrier-free facilities, gradually promote the transformation of completed facilities". Similar articles seem to set out the government's responsibilities for building a barrier-free environment. However, they do not unequivocally specify which government department is responsible for which particular item, nor do they set out the specific obligations of the department in charge. There are items that are prohibited, but the legal consequences of a department violating its legal obligations are not stipulated. Apart from showing that legislators take the construction of barrier-free environments seriously, it is doubtful that such provisions promote barrier-free environments at the regulatory level. Such a phenomenon is not uncommon in China's disability law system. Frequent expressions of "encouragement" and doing things "step-by-step" are evident in proposals for written law.

What is intriguing is that this sloganizing of principles is more evident at the higher levels of legal documents. By contrast, lower level legal documents provide clearer, more specific guidelines. For example, Article 3 of the "Notice of the General Office of the China Banking Regulatory Commission on Strengthening the Services of Banking and Financial Institutions for Disabled Clients" stipulates that banking and financial institutions should consider the specific difficulties of clients with disabilities and provide them with more detailed and personalized services. This provision is relatively principled but does not specify which detailed and personalized services should be provided to disabled clients. In a document issued by the China Banking Association (CBA), which is at a lower legal level than the China Banking Regulatory Commission (CBRC), more specific guidance is given for the issues described above. Article 5 of the "Self-Discipline Requirements for Further Improving Banking Services for People with Disabilities" (CBA No. 35 of 2012) lists 14 specific provisions for providing each person with a disability convenient and

personalized services.

For example, if someone with a writing impediment opens an account, makes a deposit, withdraws money, reports a loss or takes out a loan, they may use a handprint and a personal seal instead of a signature. Bank branches with a window for disabled people should have a keyboard device to input passwords that is convenient for visually impaired customers to use; hearing impaired customers should be provided with an electronic display service, etc.

To sum up, in the implementation of laws relating to disability, lower-level documents shoulder their legal obligations, but the law as a whole does not function fully. It is worth noting that this sloganizing is seen in the legal system of all fields in China and is not unique to the system of disability law. However, compared with traditional legal departments such as criminal law and civil law, the sloganization in the system of disability law is particularly marked. It can be seen in every legal document and even in chapters that relate to the specific rights of people with disabilities.

#### **4. Regulations on the lack of legal consequences**

It is not only the majority of regulations in the disability law system that tend towards sloganization. Rights and responsibilities are clearly stated in a minority of regulations but regrettably they are duties without responsibilities. For example, Paragraph 2 of Article 50 of the LPDP stipulates that blind people with valid documents can enjoy free travel on public transport such as buses, trams, subways and ferries. This is one of the few provisions in the Disability Protection Law that gives a disabled person a right, but does not provide for a breach of the legal consequences of that provision, i.e. the legal liabilities when public transport operators fail to comply. I have noticed more than once in interviews that in many places the Article is not implemented. Many disabled litigants report that at a local level the scope of "valid documents" in the article is restricted by a local document, for example, that says that only blind people who apply for a free travel card in their own city can travel for free within that city, not accepting that the "People's Republic of China Visually Disabled Persons Card" is a valid document nationwide. So this rare legal feature is often shelved. This is not unrelated to the failure to stipulate the legal consequences of violating the law.

#### **5. Discrimination arising directly from regulations**

The CRPD considers that discrimination on the basis of disability refers to any distinction, exclusion or restriction based on disability that has the purpose or effect of impairing or nullifying recognition, on the basis of equality with others, in the political, economic, social, cultural, civil or any other sphere, and the recognition, enjoyment and exercising of all human rights and basic freedoms. The definition of "discrimination" is concrete and comprehensive. Discrimination includes direct discrimination, indirect discrimination and the refusal to provide reasonable accommodation.

However, in China's legal system, some regulations may themselves discriminate on the basis of disability. Such regulations are prominent in many standard documents relating to physical examinations, where disability is used as an important indicator of poor health or a physical examination being not up to standard. For example, China's "General Standard for Employment of Civil Servants (Provisional)" Article 19 stipulates that "those whose eyes have a corrected acuity of less than the standard logarithm of visual acuity that is 4.9 or those with significant visual impairment are disqualified". Article 20 stipulates that "those with a hearing impairment and who wear a hearing aid in both ears and still cannot hear a whisper within three meters are disqualified." It is true that visually impaired persons and people with hearing disabilities are not necessarily suitable for certain positions in the civil service, but such prohibitions in effect deprive them of their right to a civil service profession and constitute direct discrimination on the basis of disability. Regardless of the barriers to reasonable accommodation in the civil service examinations and the attitude of examiners in the civil service interviews, even if many disabled people pass the examination, passing the physical examination is also an insuperable obstacle. As

a result, extremely few disabled people become civil servants. Many government departments, state-run institutions and other public sectors that employ disabled people do not generally hire the statutory minimum proportion of 1.5%. For instance, the proportion of disabled employees in Shanghai's state-run institutions is only 1.3%, while the percentage of disabled people in Wuhan's civil service is only 0.39%.

Regulations based on the physical examination system have many other negative effects apart from preventing disabled people from entering the civil service. For example, many provinces and municipalities stipulate that in order to obtain a teaching certificate a physical examination must be passed and this physical examination standard is based on that of the civil service. Thus, many disabled people are not able to obtain a teaching certificate because they are cannot pass the physical examination, and this leads to litigation (see Chapter 3 of this report). For example, the city of Shenzhen uses physical health as a standard when giving residence status to qualified people brought in from outside. There are strict requirements for sight and hearing, which directly excludes people with visual impairments and hearing disabilities from settling there. Deaf people are trying to reverse this discriminatory regulation but so far have received no support from the courts.

## **6. Partial compliance with the provisions of the Convention and new trends in legislation**

Although there are still problems and omissions in China's disability law system, since joining the CRPD in 2008, domestic disability laws have developed in line with international ones. In recent years, spurred on by government and non-governmental forces, more and more laws and regulations are adhering more closely to the principles and spirit of the CRPD, with some even emerging as in line with new international trends in rights.

First of all, legislators no longer shy away from using international conventions as a reference point for domestic laws. At the regulatory level, these effectively guarantee the equal rights of disabled people to travel. The "Measures for the Administration of Air Travel for Persons with Disabilities" (hereinafter referred to as "the Measures"), which came into effect on March 1, 2015, clearly refer, in Article 1, to the "International Convention on the Rights of Persons with Disabilities" and to international practice. In many places there is clear convergence. Furthermore, the Measures stress the protection the rights of disabled people to air travel. Article 7 provides that, unless otherwise stipulated, the carrier cannot refuse to provide disabled people with the conditions to travel because their external appearance or involuntary behaviour offends or disturbs the flight crew or other passengers. In addition, Article 8 stipulates that if the carrier refuses to allow a person with disabilities to board, the legal basis for such a refusal must be explained. This would effectively prevent a carrier from refusing to carry a disabled person without any excuse or merely on hypothetical grounds.

Secondly, the decision-making power of people with intellectual disabilities has been noted and strengthened in the new Civil Code and the Mental Health Law. The system of guardianship of persons without civil capacity and persons with limited civil capacity is directly related to the freedom and rights of persons with intellectual disabilities. Compared with the 1986 General Principles of Civil Law, the new Civil Code provides more detailed and specific provisions for the guardianship system. In this system, there is a greater trend towards respecting the true wishes of the ward and safeguarding his or her interests. It not only respects the ward's agreement to guardianship, choice of guardian and reassertion of guardianship, but it also stipulates that the responsibilities of the guardian in relation to adult wards should to their greatest possible extent respect, protect and assist the ward in exercising civil conduct according to his or her intellectual capacity and mental health. The guardian shall not interfere with affairs that the ward has the ability to handle independently. Although the new Civil Code still maintains categories relating to capacity for civil conduct for those with no civil capacity and those with limited civil capacity, it is a step towards Article 12 of the CPRD in safeguarding the legal capacity of persons with disabilities.

The Mental Health Law of the People's Republic of China came into effect on May 1, 2013. Widely hailed by the outside world, the Law upholds, to some extent, the right of autonomy and freedom of independent action of people with mental disorders. Article 27 of the Law stipulates that, unless otherwise provided by law, physical examinations for determining whether or not there is a mental disorder shall not be carried out contrary to the wish of the individual. Article 30 stipulates the principle of voluntary action in hospitalization for mental disorders. In combination with other provisions, persons with mental disorders cannot be compulsorily hospitalized unless they are a danger to themselves or to others, that is, they cannot be forced to restrict their personal freedom. Such provisions reflect, to some extent, the spirit and substance of the clauses on freedom and personal safety of Article 14 of the CRPD.

Thirdly, there are specific implementation details and support systems related to the participation of people with disabilities in the college entrance examination. On April 21, 2015, the Ministry of Education issued the "Provisional Regulations on the Management of Disabled Persons Participating in the National Integrated Examination of General Colleges and Universities (Interim) (hereinafter referred to as the "Administrative Provisions (Provisional)"). From 2015, examination bodies at all levels must provide the necessary conditions and reasonable accommodation for candidates with disabilities who meet the college examination application conditions and who are qualified to register for the examination, according to the individual's disability and needs and actual conditions in each place. Although the provisions of the "Provisional Regulations (Provisional)" are not perfect, at least equal access to ordinary college entrance examinations and the right to a higher education - a right which disabled persons should have enjoyed for many years but was in fact neglected - has been implemented. Together with the revision of the 2017 "Regulations for Education for Persons with Disabilities" it may open up a new future for the integration of disabled people.

### **Chapter 3: Safeguarding disability rights in China - some case studies**

In this chapter, I look at several typical cases that show the obstacles that people with disabilities face in education, employment, financial services and so on, in the process of safeguarding their rights; the attitude of disabled people when their rights are infringed; the role of China's disability law system in judicial practice; and the impact of disability cases involving judicial prosecution procedures.

#### **Case 1: It's all my fault**

"I think we all have basically the same attitude, that it's no use going to court." This remark came from Ding Hong, a woman with a disability in her upper limbs.

I met Ding Hong at a workshop organized by a nonprofit organization about the CRPD and raising awareness about disability equality. She was participating in the workshop as an ordinary local disabled person. After the meeting, she talked to me with some concern about her own experience of being refused work because of her disability and her perception of the Convention.

Ding: I think you all spoke well and the Convention is very progressive, but I feel that it's far removed from our lives.

Jin Xi: Why do you say that?

Ding: Take my own experience. I went to apply for a job as a supermarket shopping guide. My left hand has a disability; it wouldn't affect the work. But I was still afraid that boss would mind, and during the interview I kept my left hand in my pocket so that the

boss wouldn't see it. Right the way through the boss didn't notice anything. He also said that I was tall and good-looking. So there shouldn't have been any problem.

Jin Xi: What happened then?

Ding: At the end of the interview, I suddenly decided that I would test his reaction when he saw my real situation so I took my left hand out of my pocket. When he saw it his attitude totally changed. He hurriedly said that he needed to receive some guests and said that such a situation would certainly affect the work.

Jin Xi: Do you think you can do the job?

Ding: I think I can, otherwise I wouldn't have gone. I used to help people make clothes, and the problem with my hand didn't affect things at all.

Jin Xi: So what did you think then?

Ding: Actually, I did understand his attitude. Who made us have a disability? People will have their own considerations to think about. This is my own problem. So afterwards I didn't protect my rights and went back to making clothes.

Jin Xi: Do you realize that you were being discriminated against because of your disability?

Ding: At the time not at all, but I think after taking part in today's activities I do. But it will take time for me to change.

Ding Hong's experience is typical of discrimination in employment based directly on disability. The attitude of employers if they know about a disability before or after an interview is very different. It is a situation that many disabled people encounter in the process of looking for work. In fact, the LPDP stipulates a clear ban on such conduct. The second paragraph of Article 38 of the Law stipulates that no person with a disability should be discriminated against in recruitment, transfer, promotion, assessment for professional titles, remuneration for labour, or social insurance, etc. Although the law does not give a specific explanation of what "discrimination" is, whichever way you look at it is hard to say that the supermarket owner's behaviour was not discriminatory. Furthermore, the Law clearly stipulates the rights of persons with disabilities who seek justice when they encounter employment discrimination. Article 64 of the Law stipulates that anyone who discriminates against a disabled person in violation of the provisions of this Law in respect of the recruitment of workers or the like shall be ordered to make corrections by the relevant controlling body; a disabled worker may file a lawsuit with the People's Court according to law. At the same time, employment rights are almost the only rights in the LPDP that clearly stipulate that disabled persons have the right to lodge a legal complaint in the courts. However, it is obvious that both the employer and Ding Hong herself were unaware that equal employment is a basic right for people with a disability and instead attributed the problem to the disabled person herself. They did not consider that the discriminatory behaviour of others needed to be corrected and so lost the basis on which to seek redress.

## **Case 2: No way to safeguard rights**

Liu Xu is also a disabled person who did not seek redress, including litigation, after suffering discrimination.

Liu Xu suffers from retinitis pigmentosa, a retinal disease resulting in gradually decreasing vision. She has low vision and poor field of vision and is very dependent on light. She studied in ordinary schools, and was admitted to a law school in the north to study law. Here she studied and lived alongside non-disabled students and never thought of applying for additional support. However, with the loss of her vision, reading, especially in examinations, became increasingly laborious,

and her physical examination became a big stumbling block when she applied for jobs after she graduated.

Jin Xi: How many years since you graduated from college?

Liu: Almost three years now.

Jin Xi: What work are you doing now?

Liu: Admin work in a public institution.

Jin Xi: Do your visual disorders affect your work much?

Liu: No, basically not.

Jin Xi: I heard that after you graduated you put in for the law court examinations.

Liu: Yes, I applied to the Supreme People's Court and our local court.

Jin Xi: What happened?

Liu: It was no good. I couldn't avoid the physical examination.

Jin Xi: (a little surprised): You got all the way to the physical examination, after passing the written test and the interview!

Liu: Yes, there are a lot of tricks in the civil service exams. I was very well prepared. I wasn't afraid of the interview. The examiner could not see any of my eye problems. It was the physical examination that gave the game away. I simply could not meet the eligibility criteria, the doctor was not willing to stretch the rules, so in the end I didn't pass.

Jin Xi: You didn't doubt that the civil service physical examination criteria were reasonable?

Liu: There's no other way, the criteria were there. The state must certainly have reasons for such a provision. After all, civil servants are state personnel, and there should be certain physical requirements. Abiding by the law is the first thing we learn.

Jin Xi: So you still want to pass the court exams?

Liu: Yes, of course. After all, I studied law and my dream was always to be a judge. However, I don't see how you can get round the physical examination.

Being able to hold an administrative post in a public institution basically shows that she is qualified to do the work of a judge without special support measures. However, she failed because she did not meet the vision requirements in the "General Standard for Physical Examination for Civil Servants (Provisional)". Faced by such a setback, the other side should have acted in accordance with the law. Discrimination arising from the regulations themselves became an obstacle to Liu's assertion of her rights. She received higher education, and graduated from law school, yet she is still at a loss about what to do. Many more people with disabilities may also tacitly approve damage to their rights out of loyalty to a certain law. This case also shows that having the aforementioned "physical examination standards" as the normative document does indeed have the anticipated impact on the rights of persons with disabilities.

### **Case 3: Losing a lawsuit**

Unlike Ding Hong and Liu Xu, some disabled people are willing to resort to litigation when their

rights are infringed.

Xiao Shi has a congenital visual impairment. Since 2005, he has worked for a chain of health care companies in Changsha, Hunan province, doing massage and earning a stable income. In September 2016, he applied for a China Guangfa Bank credit card. After the online application was approved, on September 23 he went to the Hongxing branch of the bank in Changsha to activate the card. The bank informed him that he had to read the risk warning and then sign his name. Xiao Shi said he was blind and could not sign, the bank insisted on his signature, and rejected his application. On September 29, Xiao Shi and his friend once again went to the same branch. This time, the lobby manager grabbed his hand and helped him sign the name, but then said "in your case writing it is just the same as not writing at all." Soon afterwards, the person in charge of the branch met Xiao Shi and informed him that "not being able to read the risk warning and not signing is something not allowed to a normal person, much less to a blind person."

Xiao Shi believes the China Guangfa Bank's rejection violated his personal rights. His attorney believes that the bank's behaviour violated the LDPD and the "Self-regulatory Requirements on Further Improving Banking Services for Disabled Persons" promulgated by the China Banking Association on May 18, 2012.

On October 31, 2016, Xiao Shi filed a lawsuit with the Yuhua District Court in Changsha City requesting a judgment that the defendant, the Hongxing Branch of the China Guangfa Bank, issue a written apology to the other party as redress for discrimination on the basis of disability and to promise to provide reasonable accommodation to blind people in their business operations as well as compensation of 30,000 yuan for spiritual loss.

On April 26, 2017, Yuhua District Court made the decision to dismiss Xiao Shi's claim. In its adjudication, the court pointed out that in the present case, the plaintiff, as a person with a visual impairment, was unable to read and write normally. After his online application for a credit card had been approved, the plaintiff was unable to sign the relevant confirmation and write his signature, and he was refused activation of his credit card. The defendant's refusal was in compliance with the provisions of Article 37 of the "Measures for the Supervision and Management of the Credit Card Business of Commercial Banks". It did not discriminate against a special group and it did not violate the law or have any subjective fault. At the same time, as a financial service institution, commercial banks have the freedom in market competition to choose the targets of their financial services. Credit cards are a special financial product and themselves have a credit limit. When they are used there is a risk of theft and misuse. Commercial banks have the authority to exercise discretion and have strict examination and approval procedures in order to protect credit safety and customer transaction security. The plaintiff gave evidence that when the individual commercial bank handled the credit card for the plaintiff, it involved someone else completing the signing, recording, photocopying and finger-printing on his behalf. The defendant said that this aforementioned flexible method did not apply to the plaintiff for credit card activation. The defendant adopts far more rigorous methods and standardized review criteria compared to other commercial banks when approving credit card applicants. The defendant has the freedom of choice in a contract. This cannot be found to constitute discrimination against the plaintiff and violation of the plaintiff's personal rights.

Although the rejection of a credit card application may have less impact on the life of a disabled person than the denial of education, employment, etc., nevertheless Xiao She and his attorney filed the case in court and, after a public court hearing, received a verdict. My understanding of the situation before and after the case and conversations with Xiao Shi himself leads me to believe that there are several reasons for his willingness to sue:

Firstly, the demonstrable effect on social partners. A visually impaired friend of Xiao Shi's had previously sued his bank. Eventually, the bank corrected its original mistakes, leading to a good

outcome. It was only with his encouragement and support that Xiao Shi dared to litigate to protect his rights.

Secondly, the strong support of public welfare lawyers. In this case, Xiao Shi's lawyer provided legal public interest services and did not charge him a fee. Otherwise he would not have taken it on because the actual amount involved was limited. It had little economic impact on Xiao Shi. Its main significance was the impact it had on the protection of disability rights. If he had had to pay his own legal fees based on market rates, it is hard to imagine that Xiao Shi would have been willing to file a lawsuit.

Thirdly, the defendant's tough attitude and refusal to conciliate. In similar litigations in the past, some defendants, after being sued by disabled people, realize their mistakes and actively seek reconciliation with the plaintiff so as to avoid going to court and adjudication. However, in the present case, the defendant, China Guangfa Bank, never considered its own behaviour as constituting discrimination. All along it insisted on competing with the plaintiff right up until the trial and the adjudication.

Finally, public opinion. Right from the start, this anti-discrimination public service case received widespread attention from the disabled community and the news media. The plaintiff Xiao Shi not only litigated on his own account, but he also took on the responsibility of getting more equal access to financial services for visually impaired people and rectifying the bank's discriminatory action. I give a brief analysis of the reasons for the verdict and the plaintiff's defeat below.

On the one hand, both banks and courts are selective about laws and regulations and rigid in their implementation and application. In the work of banks, there are not only the rules for ensuring transaction security and preventing financial risks, but also rules for treating clients equally and providing reasonable accommodation. However, both the banks and the courts unilaterally emphasize the former, and once they discover that rational rules can be provided for a bank's decision, they will use them assiduously and thus their own decisions tend to be conservative.

On the other hand, there is a one-sided emphasis on freedom of trade and misconceptions about discrimination. It is not hard to see from bank claims and court decisions that they believe that discrimination requires subjective intent. In other words, if the subject does not claim to discriminate against disabled people, it is hard to identify it as discrimination. However, according to the CRPD, discrimination on the basis of disability is an objective condition and refers to any distinction, exclusion or restriction based on disability, with the purpose or effect of impairing political, economic, social, cultural, civil or any other areas; or to injure or nullify the recognition, enjoyment or exercise of all human rights and fundamental freedoms on an equal basis with others. Obviously, what constitutes discrimination has nothing to do with whether the individual has a subjective sense of discrimination or even claims that he / she is being discriminated against. Moreover, discrimination itself arises as a result of unrestricted freedom of contract. The perpetrator can choose to trade according to his or her own preferences, thereby directly limiting or affecting some disadvantaged groups. This case once again leads us to think about the inherent tensions between freedom and equality.

#### **Case 4: Settling a lawsuit**

Similar to Liu's experience, Li Ling, a physically disabled person in a southern province, almost missed out on his ideal job because of the physical examination. But unlike Liu Xu, Li Ling took the opposite approach and eventually achieved a completely different result.

Li Ling was born, in 1988, without a right hand, but attended ordinary schools. She is very interested in art and teaching and attended a normal (teachers) university both as an undergraduate and a graduate student. She obtained her teacher's certificate, but after graduation, like other disabled people, had great difficulties in finding a job. She applied to many schools but never



found an ideal job and took a temporary low-paid position in a local private school. At the end of 2015, she entered an examination to teach in a certain area. She passed the written tests and interviews and was confident that she could now enter a better school. However, she did not get the post because she failed the physical examination.

Jin Xi: What did they say made you fail the physical examination?

Li: The hospital concluded that according to Article 14 of the provincial teachers' physical examination standard I failed because of "upper extremity disability, affecting writing on a blackboard".

Jin Xi: What did you think after you heard this?

Li: I thought it made no sense. I've always written with my left hand on the blackboard. Not having a right hand has no effect on my board writing. When I was at college studying for a teacher's certificate, why didn't they say then that my physical condition prevented me from being a teacher? And this time, when I applied to become a teacher, they knew my situation, let me sign up, saw me at the interview, but all along said nothing. How come it's only now after passing the exam and doing the physical examination that they insist that I'm not qualified?

Jin Xi: How did you deal with this?

Li: My father came, mainly to help me with communication. To begin with we looked for a hospital who would do another physical examination for me, hoping to correct the results. Then we went to the departments of health and civil affairs to petition. We also tried to find the deputy mayor. But it was useless. Finally, the only thing to do was to lodge a lawsuit and take the district Bureau of Education to court.

Jin Xi: What were the main bases for litigation?

Li: The main thing was that the disability in my upper limb did not affect my writing on a blackboard. This doesn't mean that I did not meet the physical examination standards. Also, I've got the teacher's qualification certificate, which shows that I have the physical condition to become a teacher. And when I applied for an official teaching post, they knew my physical condition, and still allowed me to sign up, showing that they recognized my qualifications.

Jin Xi: What was the outcome?

Li: The Bureau of Education and the Personnel Bureau contacted us after the case was filed. Before that when we went to see them, they were cold and indifferent. The result was that one day before the trial, they said they would give me a post and arranged for me to enter a good high school to teach art.

Me: Are you satisfied with the result?

Li: Yes, very.

Li Ling's case undoubtedly had a satisfactory outcome for all parties. As for Li Ling herself, successfully obtaining the teachers' certificate and getting a good job enabled her to gain further career development, and basically she achieved the same result as winning the lawsuit. As for the Bureau of Education, they avoided adverse social impacts and the risk of losing the case. It also allowed a qualified person of talent to be absorbed into the teaching ranks. The case brought by this lawsuit and its settlement brings us more food for thought.

Firstly, the disabled party, after realizing that his/her rights have been violated, will turn to litigation as a last resort. Li Ling and her family first thought of communicating directly with the departments who were infringing her rights, hoping that the other side would make corrections on its own. She then hoped to settle the dispute internally by appealing to other authoritative bodies. When both these methods failed she decided to resort to litigation. This is also the sequence of events adopted by disabled people willing to defend their own rights. The traditional sensibility in China is that the law takes priority. Private and informal mediation and communication often come before public and formal judicial proceedings.

Secondly, it is only after parties resort to litigation that violators pay sufficient attention to their actions. In the present case, the change in attitude of the education departments before and after the filing of the court cases is not unique. This is a common phenomenon with disability rights litigation containing anti-discrimination content. If people with disabilities make concessions to avoid trouble, just seeking internal communication to resolve disputes, those who discriminate are not likely to experience the danger of their own discriminatory behaviour and the inherent power of disabled persons, and will therefore either completely ignore them or find every way to shift the responsibility. Only after disabled people have been repeatedly rebuffed and overcome enormous pressure to muster the courage to bring litigation, will those who discriminate feel pressure from the judicial process and public opinion, and perhaps then they will truly reflect on the legitimacy and rationality of their own behaviour and assess the different impacts that different strategies may bring them.

Thirdly, both parties tend to examine the legality of their actions within the rules while failing to reflect on the rationality of the rules themselves. In this case, the reason why the Bureau of Education actively reconciled with the plaintiff was that it may have thought that the plaintiff would not fail the physical examination. The main basis for the plaintiff's litigation was that her disability did not affect her writing on a blackboard. No one questioned whether the physical examination itself violated the law or whether it constituted discrimination. In the case of the China Guangfa Bank refusing the credit card, the defendant's defence and the court verdict relied mainly on the "Commercial Bank Credit Card Supervisory and Management Measures" which stipulate "writing in person" and the "three-person principles", and did not reflect on the whether the rules themselves were reasonable.

This kind of value-oriented legalism is very common in China's judicial practice. Disability anti-discrimination cases are no exception. If disabled people are to have a dominant position in litigation, they will need to work hard to prove that their claim conforms to a specific legal provision, and conversely they are likely to face difficulties. The same applies to court judgments, which focus more on specific scrutiny of behaviour rather than abstract scrutiny at the regulatory level. This leaves a large number of anti-discrimination cases unsustainable. Perhaps this is also related to the aforementioned legal system. In general, the higher-level regulations are often more advanced and closer to the principles and spirit of the Convention. The lower-level regulations are more susceptible to indigenous traditions and retain more discriminatory content. However, the higher-level regulations in China tend to be rather abstract and based on principle. For example, the provisions on equality, discrimination and reasonable accommodation are difficult for the court to apply directly. But a large number of lower-level provisions appear to be more specific and implementable. For example, the many medical regulations that exist are easier for government departments and courts to implement.

### **Case 5: Winning a lawsuit**

As mentioned earlier, there are not many cases where persons with disabilities resort to litigation in cases of infringement of rights. In such cases, the majority end in mediation or defeat. However, this section focuses on one of the few winning cases.

Although she had no sight in her right eye, this does not affect Wang Li, a native of Jinhua in Zhejiang province, who works as a local kindergarten teacher. She became a kindergarten teacher

around 2008. She explained that in her first few years as a kindergarten teacher, the relevant departments had no hard and fast rules about new teachers holding a "kindergarten teacher qualification certificate". After 2012, she passed the examination for this particular qualification. On July 2, 2015, she went to Yiwu Chinese Medicine Hospital to take the physical examination. Although she had no sight in her right eye she did not worry too much because she had more than eight years of experience in her post. However, in the section on the medical form about sight, the doctor noted that she had sight in only one eye and signed her off as "unqualified." On July 5, she received a phone call from Yiwu Bureau of Education who told her that she had failed the physical examination and would not get the certification.

After Wang Li's failure to obtain a kindergarten teachers' certificate from the Zhejiang Yiwu city and Jinhua city education bureaus, Wang Li hired lawyers to file a lawsuit at the Jinhua Wucheng District People's Court to take them to court.

The case was heard in court in Wucheng District, Jinhua City on November 17 2016. The Yiwu Education Bureau argued that they had appointed a hospital above county level to carry out a physical examination on Wang Li according to the law. According to this physical examination it was concluded that she was not qualified. The bureau's decision was not to award her a certificate. They asserted that the facts were clear, the application of the law was correct, and the procedure was legal. The Jinhua Education Bureau argued that they acted according to law in reviewing her application. It asserted that the facts were clear, the application of the law was correct, the procedures are legal and the contents were appropriate.

Wucheng District Court considered that Yiwu education bureau said that the reason Wang Li failed the physical examination to become a qualified teacher was based on the " Zhejiang Province Teacher Certification Physical Examination Standards and Procedures ". According to the provisions of this document, glaucoma and retinal and nerve diseases would fail the physical examination, but Wang Li's physical examination results, that she had no right eye, did not fall within the provisions of the document. The Yiwu Bureau of Education did not check that the results of the physical examination were consistent with the relevant provisions of the document. This led directly to Yiwu using the hospital result as a reason not to award her a teaching certificate. This was not sufficient evidence.

Finally, Jinhua Wucheng District Court ruled to nullify Jinhua education bureau's decision to uphold the reconsidered decision of the Yiwu education bureau and Yiwu's original decision not to grant her a kindergarten teaching qualification. Within 15 working days after the ruling took effect Yiwu education bureau reconsidered Wang Li's teaching qualification.

Within the large number of disability anti-discrimination litigation cases, the successful outcome of this case is undoubtedly commendable. Similar to Li Ling's case, Wang Li's having only one eye clearly did not match the "Zhejiang Province Teacher Certification Physical Examination Standards and Procedures" relating to the type of diseases that would fail the physical examination. Perhaps it was only then possible to get the court's support. But if one party has glaucoma or some other eye disease, even if they are competent as a teacher, would they be able to obtain a teaching qualification? This is worrying.

But in any case, a successful outcome is always encouraging. Mediation needs to be done in private, with parties even having to sign confidentiality agreements, but judgments must be made public, accessible to the public on the Internet, and news media can also promote coverage, giving more people a chance to know about the case. This is why some parties involved in cases of disability rights-protection seek a judgment and are willing to risk losing a lawsuit. Although China does not go by legal precedent, effective court judgments may also provide guidance for similar cases in the future, especially for courts that make judgments and lower courts within their jurisdiction. In a word, every disability rights protection case brought to court and placed in the

public eyes is pregnant with the power of change.

## Chapter 4: Difficulties of protecting disability rights

In the previous chapter, various cases show the different ways in which people with disabilities confront rights violations, and the outcomes. This chapter will further analyze the reasons why disabled people adopt different methods and what the effects are. It will also analyze the problems existing in the legal protection of disabled people's rights in combination with the legal system as mentioned in Chapter Two.

### 1. Not wanting to be a minority

The first obstacle to ensuring disabled people's rights in law is that disabled people themselves do not have the will to actively defend their rights. They do not want to be different from others, and do not want to receive the so-called care. Being unwilling to become a minority has become a deep-seated psychological reason why they have not tried to defend their rights.

"My teachers and classmates did not think I was different from them and they did not connect me with people with disabilities." When Liu Xu, who has low vision, says these words, I can sense her hidden pride, despite her calm tone. She has been studying in ordinary schools and she has not been discriminated against because of her visual impairment. However, she did not apply for any reasonable accommodation different from other students. Like most others, perhaps most disabled people have a simple but deep-rooted understanding of equality.

Jin Xi: Does your visual impairment affect your studies?

Liu: Yes, especially after I went to university, I had to read more and more and sometimes I felt I just couldn't do it. Especially at exams, if there was poor light where I was sitting, it was particularly difficult looking at the exam papers. For example, in the preparatory exam for the postgraduate exam the light wasn't very good, I didn't have time to finish, and missed passing by two points.

Jin Xi: You didn't apply for reasonable accommodation, such as asking to change seats or bringing your own desk lamp or something?

Liu: No, the seats were all arranged, if you could you ask to swap seats, what if the other students wanted to swap as well? If you asked for a desk lamp, wouldn't it be unfair on the other students?

Jin Xi: So you usually rely on your residual vision in exams?

Liu: Yes, before each exam I hoped that the seats would be closer to the window, but I never thought that the school should give any special care.

Jin Xi: But don't you think that it will affect the development of your potential, that it will lower your exam marks? For example, you should have been able to pass the postgraduate exam.

Liu: There is no other way. The exams are fair. Not seeing is my own problem, you can't make changes just for one person. In the postgraduate exams I can only blame myself that I didn't study enough. If I'd really been strong enough I would have been able to pass.

Jin Xi: Why do you think so? It's not your fault you have a visual impairment, is it?

Liu: I do feel helpless. My eyesight isn't good. I don't want to give others an extra burden. I want to do what the other students can do.

Jin Xi: You also study law. Did you know about the United Nations "Convention on the Rights of Persons with Disabilities" and "Disabled Persons Protection Act"?

Liu: I didn't learn about those laws at law school. I heard about the CRPD after I graduated, but I didn't learn much about it. It was only today after talking to you that I had more understanding about reasonable accommodation!

Jin Xi: Will you apply for reasonable accommodation in the future in an exam or during work?

Liu: (silent for a long time): Maybe, but it might take some time for me to change my ideas.

Liu Xu's view is typical of those of many people with disabilities, especially people with a relatively low degree of disability and who are learning to live in an inclusive environment. Many disabled people and their families attribute their disability to some personal tragedy, believing that disability is a deviation from the norm and needs to be rectified to thus distinguish oneself as far as possible from the disabled world. What follows is that often their understanding of discrimination rests at the level of direct discrimination. They consider that equality just means being treated equally without discrimination, not realizing that reasonable accommodation is also a right and not just a moral consideration, and that refusing to provide reasonable accommodation also constitutes discrimination. In addition, when Liu Xu talked to me she repeatedly mentioned the phrase "not asking for special treatment". It is clear that deep down she has a fear of being part of a special community or minority group.

## **2. Extra pressure**

"When the other students are single-mindedly revising for the CET-4 (College English Test) exam, I not only have to worry about whether or not I can pass the exam, but also how I can take part without a hitch. It really makes me feel tired." These words were spoken by visually impaired Wang Qian, who successfully sued the Ministry of Education, winning the right to use braille in the Band 4 College English Test.

"We all went to the exam room and sat down, but because there were no exam papers in Braille, we had to leave without writing a single word." This is what Wang Qian said after the CET-4 examination in December 2016. Wang Qian thought of applying for four CET-4 exams from September 2016. When she saw on her (online) class group that there was a "CET-4 application form for reasonable accommodation for disabled candidates" she felt happy that she would be able to take part. However, it was only after she opened up the form that she discovered that the only reasonable accommodation given to visually disabled candidates was large print and priority entry to the exam room. There was no option to have a Braille exam paper. She said that six students with low vision chose to take the exam using large print. But as a child she had learned English in Braille, she could only take the English exam using Braille, so when applying for reasonable accommodation she and another blind student had to fill in the column saying "other" and write 'Braille exam paper', hoping that this would be approved.

"The teacher responsible for the school exams was very good, and actively helped us to submit an application to the provincial education examination board." But Wang Qian then faced a long wait and it was just a week before the exam that she received a reply saying that they were unable to supply exam papers in Braille. However, on the morning of the exam, they still went to the examination. It was only when the exam papers were given out that it was confirmed there were no Braille papers, and so they had no choice but to pack up their things and leave. "When the marks came out, I checked my own score. 0 points. I have never got 0 points before in an exam. I felt all sorts of emotions." Wang Qian described her mood at the time. "It was actually a big blow

for me. I had never before felt that it was a pity that I couldn't see. As a child I went to a special school. I never felt that not having good sight would have some effect. But for some time after I couldn't accept myself. I was very angry with myself. Just having a little bit of sight is considered OK, you can have a large print exam paper and take part in the exam. I had very little trust in myself and was very sensitive. I went home in the winter holidays. My mother and father's care and concern made me very angry. I was afraid they would think I was useless.”

That year's failure and her inner conflict in the end did not destroy Wang Qian's determination to take part in the CET-4 exam. So, after registering the following March, she first sent her application materials to the provincial education examination centre and the Ministry of Education examination centre, asking them to provide Braille examination papers for the CET-4 examination in June, but she did not receive any substantial reply. In desperation, she had to take a second step, and through the website she applied for government information disclosure, and asked for the Ministry of Education publicly to provide reasonable accommodation for candidates with a visual impairment in the CET-4 exam, which was after all in accordance with the "Government Information Disclosure Ordinance". The government department would have to reply within 15 days after receiving the application. As a result, she received the reply that the application information was not in the public domain. The Ministry of Education also indicated that it planned to provide a Braille test papers in the 2018 CET. Wang Qian felt helpless, youth does not wait for people, she would have graduated in 2018, which meant that a Braille test paper would be meaningless. On May 10, 2017, she took a third step by hiring a lawyer to bring an administrative lawsuit, and filed the case with the Ministry of Education. The court accepted the case, with the result that that evening the Ministry of Education informed Wang Qian that they would provide Braille exam papers for the CET-4 exam in June.

Jin Xi: How did you feel when you decided to litigate?

Wang: The psychological pressure was really great, I was really scared, afraid of the negative impact that litigation would have on family, friends, school and myself. I'd often have nightmares.

Jin Xi: Did you feel better after your application was approved?

Wang: I felt even more nervous. Up until then I was just quietly concentrating on revising. I saw the other students preparing for the exams for so long. But before, all I worried about was whether I'd pass the exam or not. I really felt extremely tired. In fact, I don't want to think about whether or not I pass the exam. I just think that I have opened up the way for other visually impaired people to take part in the exam in the future.

Jin Xi: Was applying for reasonable accommodation even more stressful than the exam itself?

Wang: Yes. I almost couldn't stand it. During that time all the things I had to deal with in school, the education department, the court and the media left me totally exhausted. Each time I phoned someone I felt I wanted to cry. I was afraid they would worry about me and I was even more afraid that the litigation would have an adverse effect on them. If I have to struggle for reasonable accommodation in the next exam I would rather not do it. It just makes one fall apart.

"Tense" and "too tired" were the two things that Wang Qian repeatedly said in my telephone calls with her before and after the CET-4 exam. Possible refusal or obstacles in the life of disabled people may be ubiquitous, ranging from watching a film or taking a plane to taking the university entrance exams or applying for a job. The refusal may be very simple, just a single word or a single look is enough. However, if people with disabilities want to restore their rights to their original state, and participate in the activity that has been refused to them, the effort they have to make is a hundred times more and they have to bear extra pressure compared to other participants.

What is even more stressful when signing up for an examination, apart from the heavy pressure of revising for it, is whether or not you will be able to take it. When applying for a job, in addition to preparing for the interview and the questions about professional skills and personal qualifications, you also have to consider how to deal with the interviewer, who may lack understanding or even be prejudiced. The frequent damage to the rights of the disabled, the high cost and the low return of litigation may be the most important reason why most people with disabilities do not want to seek access to justice.

### **3. Non-compliance with the law**

The first two sections above discuss the dilemmas that disabled people face when resorting to justice to protect their own rights. What kind of obstacles do disabled people encounter when they understand the law and are willing to rely on the law to claim their rights?

Xie Yuan is a visually impaired young man from Xinjiang who went to Shanghai last year to work in a massage parlour. Last year, at a workshop on disability equality awareness, he learned that Article 50 of the LDPD stipulates that blind people have passes to travel freely on public transport such as buses, trams, subways and ferries, etc. So he believed that his "People's Republic of China visually disabled person Certificate (Level I)" was enough to prove that he was a blind person and should have free bus and subway travel in Shanghai. However, each time he used his disability card to take the subway, the staff at the ticket checkpoint often would not recognize his disability card as valid for free travel and would still require him to buy a ticket.

Jin Xi: Why didn't the subway staff let you ride for free?

Xie: He said that according to the "Shanghai Rail Transit Passenger Code," only blind people with a Shanghai city blind persons pass could travel for free. He did not recognize my People's Republic of China visually impaired persons card. A Shanghai pass is only given to blind people who are permanently resident in Shanghai. I also went to get advice on whether or not outsiders can apply for the pass. The usual requirement is that you must have stable work and a certain period of social security records to claim. Visually impaired people working in massage parlours like ours do not have the basic options to do this.

Jin Xi: Did you tell the subway staff about the provisions of Article 50 of LDPD?

Xie: Yes. I also printed out the legal provisions for them to read. They said they knew the law, blind people had mentioned it to them before. But that's what the higher authorities had stipulated and they were just acting according to law.

The free use of city public transport by blind people is clearly stipulated in the LDPD and is one of the few regulations in the Law that has relatively clear rights and obligations. However, it is regrettable that in some areas local provisions are made based on a narrow interpretation of "valid documents", thereby virtually eliminating the implementation of the national law of the LDPD. This happens not only in Shanghai but, as far as I know, there are similar rules for rail travel in places like Ningbo and Wuxi.

This non-compliance with the law may be due to local protectionism, or perhaps stems from the fact that the LDPD is not treated as a compulsory legal norm. As mentioned earlier, one of the few mandatory rules may be easily overlooked when there is too much advocacy in a law. So far it has not been found that people with disabilities have attempted to challenge the legitimacy of the aforesaid provisions in Shanghai by litigation, so it is hard to place this phenomenon under the scrutiny of the judiciary and public opinion.

Not unusually, law-enforcing agencies may very easily use the special nature of the disabled community as a reason to deny the validity of some laws that are universally applicable

throughout the country once they relate to disability. For example, Article 2 of the Labour Contract Law of China stipulates that enterprises, individual economic organizations, private non-enterprise units and other organizations within the territory of the PRC shall establish labour relations with workers and shall conclude, perform, change, terminate or terminate labour contracts using this Law. According to this provision, blind massage providers as individual economic organizations should also sign labour contracts and pay social insurance according to the Labor Contract Law. However, research shows that in practice, most massage agencies do not sign labour contracts with their blind masseurs and do not pay social insurance. To this end, I have had formal and informal conversations with a number of visually impaired masseurs. Among them, the concerns of Yun Cheng, a blind masseur working in a massage centre in a southern province, are very representative. She told me the story of her fight for her rights.

Yun: There are about 60 massage experts at our shop, blind and sighted are about half and half. The boss didn't sign a contract with any of us and didn't give us social security.

Jin Xi: You are very worried about this situation, aren't you?

Yun: Yes, I feel very unprotected, especially when a work injury occurs. Once one of my blind colleagues damaged his eye walking along the corridor and it required surgery to remove the eyeball. He asked the boss for compensation since it happened during worktime and was a work-related injury. But the boss said he didn't have industrial injury insurance so how could he give him compensation. But in the end he gave him some money out of morality.

Jin Xi: Have you taken any measures to protect yourself?

Yun: Yes, I have. A fairly active visually impaired masseur in our shop thought that it was illegal that the boss hadn't signed a contract with us and went to report this to the Bureau of Human Resources and Social Affairs. They said that blind massage was a special profession and had to be dealt with specially and told us to get a decision from the China Disabled People's Federation (CDPF). But when we went to the CDPF, they also said blind massage was a special industry and that they could not force the boss to provide social security. There was really no solution so we went and sat quietly at the door of the municipal government. After we had sat there for several days the municipal government looked at the situation and only then told the CDPF and the Bureau of Human Resources and Social Security to take the matter seriously. They found our boss and asked us to sign the contract and get social security according to law. The boss called us back to the shop, took out a labour contract and asked us to sign it. However, we discovered that in the contract our pay was lower than before and the working times longer. We asked the boss to change the contract, but he disagreed and in the end we didn't sign it. Then the boss told the government that we ourselves were not willing to sign the contract, and in the end the masseur who pioneered rights protection left the shop.

This case really makes one weep. The protest did not achieve the hoped for result. However, if one thinks about it, it is not difficult to see that there is non-compliance with the original mandatory labour laws when it comes to blind massage agencies. Government departments even use the term "special industry" as a reason to tacitly consent to this kind of illegal behaviour. This is by no means unique. Disabled people can only go to special education schools, disabled people must be accompanied by a guardian for to do business at a bank, disabled people travelling by plane must have a hospital certificate to prove that they are suitable to be a passenger. These actual cases remind us that in people's minds, the peculiarity of people with disabilities is even stronger than the universality of law, so that when many laws and regulations come up against disability-related issues they are either intentionally or unintentionally not applied, so that for people with disabilities to realize their rights they have to look outside the law to satisfy extra, artificially set, conditions.



#### **4. No law to be complied with**

Apart from existing rules in the law that cannot be effectively implemented, there are, in fact, even more spheres in disability rights protection that are faced with insuperable hurdles. When the principles of China's disability legislation and advocacy leads to the infringement of many specific rights of persons with disabilities, it is difficult to find a clear legal basis for seeking rights. Even litigation may be faced with the dilemma of non-compliance with the law. A typical area is the problem of accessible information websites. Even though the CRPD requires each state signatory to provide disabled people with access to new information and communication technologies and systems, including the Internet, it is difficult to find mandatory provisions about accessibility of information in Chinese legislation, so that when the poor design of a website affects its use by disabled people, even if leads to litigation, there will be a huge risk. A typical example is last year's case about the 12306 verification code when visually impaired people sued the head office of the railways.

Chen Bin, 32, is a native of Gansu. He lost the sight in both his eyes at the age of 10 because of congenital atrophy of the optic nerve. In 2010 he went to Beijing to become a masseur in a massage parlour. Each time he returned home, his biggest difficulty was buying a train ticket. He said that before 2015, the 12306 official verification code website for entering the number used English, as far as visually impaired people are concerned, could be entered by using computer or mobile phone voice software. But when the 12306 verification code website upgraded to picture format, it became very difficult for him to buy a train ticket. In order to be able to buy a ticket to go home for the Chinese New Year, he had to take a taxi to Beijing west railway station to buy a ticket, a taxi fare which cost him 110 yuan. In order to get the railways website to remove this obstruction to buying a train ticket, on January 26, 2016, Chen Bin asked a lawyer to file a lawsuit with Beijing Haidian District Court. The plaintiff filed claims against the China Railway Corporation, China Railway Information Centre and China Railway Science Research Institute, claiming damages of 110 yuan for the taxi fare and one yuan for spiritual damage. The lawyer maintained that the defendant's use of the image verification code discriminated against persons with visual disabilities and that they should upgrade the verification system so that visually impaired persons could buy the tickets without any problem.

In the court, the China Railway Corporation and the other defendants argued that upgrading the verification method from digits to images was to guard against ticket scalpers and software that could steal tickets, to the maximum extent possible; they were not discriminating against visually impaired persons. Moreover, Mr. Chen could buy train tickets using a variety of other methods.

After hearing the case, the Haidian court held that the 12306 image verification system on the official website of Mr. Chen did indeed create an obstacle to buying tickets, but this fact did not infringe Mr. Chen's right to travel or his right to buy tickets. In addition to the traditional method of buying tickets at a railway station ticket counter Mr. Chen could also buy tickets at a train retail outlet, reserve a ticket by phone, or buy a ticket at an automatic ticket machine. These methods did not require image verification. Haidian Court held that the purpose of the image verification procedure was to prevent people from buying and hoarding tickets via the Internet, and also for the public to have fair ticket purchasing rights. Although objectively this procedure is inconvenient for visually impaired persons and the image content is an obstacle, it does not constitute discrimination against visually impaired persons. In the end, the Haidian court, in the first instance, rejected all Mr. Chen's demands.

Although the case itself failed, at the end of last year the railway website quietly cancelled the obstructive ticket purchase verification code. It is hard to think that this was unrelated to Chen Bin's complaint. However, with regard to this case, although the action of the railway website seriously affected visually impaired people's fair purchase of tickets and did not conform with the provisions of the CRPD relating to accessibility of information, there are many areas in Chinese law that have no clear legal basis. This was a major reason for the failure of this lawsuit.

First, there is no legal basis for determining discrimination. An important basis for Chen Bin's litigation was that the website's image verification code constituted discrimination against visually impaired persons. However, in current domestic law, the lack of a clear definition of discrimination makes it easy for a court to assert that an act does not constitute discrimination if it has other motives. In the present case, there are two "reasonable explanations" to eliminate discrimination. The first is that the setting up of an image verification code was to guard against illegal hoarding and ticket scalps rather than to obstruct visually impaired people from buying tickets; and the second is that visually impaired people can choose other methods to buy tickets apart from the website, where they do not have to buy tickets via a recognition verification code.

Secondly, website accessibility lacks explicit and mandatory standards. What constitutes an infringement of rights must be a violation of the law. But it is not easy to examine whether the behaviour of the railway website actually transgresses any current Chinese laws because there are no clear and mandatory regulations about barrier-free information. Probably the closest provision is Article 22 of the "Regulations for the Construction of a Barrier-free Environment" which stipulates that websites of organizations for persons with disabilities should meet the criteria for accessible website design; government websites above the city level and government public welfare website should gradually achieve accessible website design standards. However, the railway's 12306 website does not seem to belong to this category. It is very difficult for the action to be considered illegal and there is insufficient important evidence for it to be considered discriminatory.

Finally, litigation claims lack adequate legal support. In this case, Chen Bin's most important appeal and his direct aim in suing was clearly to demand that the website cancel the verification code. However, the form of liability stipulated in China's disability law system is very limited and does not include, through litigation, a requirement that lawbreakers redress their illegal action. Therefore, it is only in civil law that parties can find a basis for requiring the defendant to bear responsibility. However, in civil law, legal responsibility is based mainly on payment of money. It is not a statutory form of responsibility to stop the implementation of a particular act. Therefore, in this case the party had no option but to demand that the defendant pay compensation for the taxi fare because a ticket could not be bought online. All similar anti-discrimination public interest litigation encounters this kind of awkwardness. After all, the direct purpose is to correct the illegal act, rather than get monetary compensation.

## **5. Discussion**

This chapter and the previous chapter discussed the current difficulties facing the legal protection of disabled people's rights in China. It is impossible, of course, for my research to look at all the obstacles.

Liu Xu's and Wang Qian's cases examine the difficulty of safeguarding disability rights adjudication from the perspective of a disabled person. First of all, many people with disabilities do not realize that an already established act of discrimination is, according to the CRPD or other human rights laws, a violation of their rights, and just expect that others will have the awareness to render the necessary adjustments and care. On the other hand, even though disabled people may in the end resort to litigation to protect their rights, many of them, like Wang Qian, face tremendous psychological pressure. Since all defendants are government departments or large enterprises, even if they are willing to file a lawsuit, people with disabilities worry that they or their families may be adversely affected. The cost of access to justice is not low, and most disabled people who strive to protect their rights the first time, find it even harder to go to court a second time.

Section 3 of this chapter also discusses cases where many clearly defined legal rules are not well implemented in practice. There may be many reasons for this. First of all, disability laws have always been on the margins of China's legal system. Most law schools offer no relevant courses whatsoever. Nor do they appear in the national law examinations. As a result, most law

practitioners are not familiar with such laws, not to mention the personnel of other government departments. Secondly, in some cases, disabled people are still treated as a special group separate from non-disabled people, so that many people, will use “special protection” as an excuse to violate their actual equality. Finally, there is a conflict between central and local government legislative power. Because national laws are excessively abstract and based on principle, when local regulations make specific provisions they may become unsuitably narrow or expand part of the higher laws, resulting in the fact that the higher laws are not practically implemented.

In contrast to non-compliance with the law, the phenomenon of there being no law to comply with as discussed in section 4 of this chapter may be more difficult to rectify. Courts generally uphold the tradition of mainland China's legal system, where judges are often passive and conservatively interpret and implement the law according to its literal meaning. Furthermore, the laws and regulations related to disability are often not systematically studied. There is also a limited understanding of disabled people. In their hearts, they may not consider disabled people's claims to be rational. In the Chinese language, however, because discrimination has a clearly negative moral connotation, when there is no clear regulation in law, the courts will not easily believe that certain acts are discriminatory.

## **Chapter 5: China's disability rights protection in the future**

This chapter addresses some of the existing problems of disability rights protection in China, and proposes some feasible solutions and countermeasures. I attempt to analyze, from the different perspectives of disabled people, lawyers and other legal workers, legislators and people working in NGOs, the work that needs to be done to promote the legal protection of disability rights of disabled persons.

### **1. Change consciousness and spark a fire**

Guided by disabled people who have an awareness of disability rights and legal knowledge, the level of awareness of disability rights protection can be raised and a social foundation for promoting social progress can be established.

With regard to disabled people, the chief obstacle to their rights being protected equally by law is their tolerance of violations of their own rights and their unwillingness to assert their rights, leading to their inability to make use of the law. Being unwilling to protect their rights stems from a lack of awareness of their rights. What this reflects is that there is a gap between their recognition of the phenomenon of disability, intrinsic human dignity and worth, and social pluralism, and the spirit of universality communicated by and advocated in the CRPD and other international conventions. However, during the course of this study, while interviewing people with disabilities, I discovered that their disability awareness was quietly changing. Both Ding Hong and Liu Xu expressed a significant change in their understanding of discrimination and rights. They realized that they did not have to attribute their failure in job-seeking or examinations to their own disabilities and that others had the obligation to respect their demands for equal rights and reasonable accommodation. Disabled parties, including Wang Qian and Xie Yuan, who understand and are willing to actively defend their own rights, have learnt about international consensus and good practice related to protection of disability rights through participation in workshops on disability equality awareness or training related to CRPD. Therefore, the first step to improve the ability of disabled people to safeguard their own rights is changing their awareness.

This awareness-raising can happen in two ways: starting with individuals and then spreading out. Individuals are mainly disabled people who already have an awareness of disability rights and the law, and who have day to day contact with their disabled friends or have taken part in similar research interviews, and so influence the awareness of other disabled people. Practice shows that

this kind of influence is relatively effective, but the disadvantage is that the scope of influence is limited, and the relationship between the one who is influencing and the one who is influenced may interfere with the outcome. Spreading out more widely can plug these deficiencies, that is, through workshops, training sessions, salons and other arenas that give disabled people an understanding of their own rights and the laws and regulations. Practice has also shown that after every effective workshop on disability awareness, several people have gained an understanding of disability law. Over time, after a certain amount of theory and practice, those with this knowledge may spur on and influence other people with disabilities.

In summarizing the findings of this research I suggest that through education and advocacy we need to raise the awareness of disabled people in the following areas:

**a. The concept of disability.** Disability based on the model of rights and the CRPD's definition of disability are evolving concepts. "Disability" arises when various attitudes and environmental obstacles prevent people with disabilities from full and effective participation in society on an equal basis with others.

**b. Definition of discrimination.** The public's understanding of discrimination, including the understanding of disabled people themselves, rests on a form of equality which violates the idea of equal treatment without discrimination, so that it leads to direct discrimination. It should be understood that discrimination is based on any distinction, exclusion or restriction that is disability-based. Its purpose or effect is to undermine or abolish the basis for equality which other people have in political, economic, social, cultural, civil or other spheres, as regards the endorsement, enjoyment and exercising of human rights and basic freedoms. Disability-based discrimination includes all forms of discrimination, including refusal to provide reasonable accommodation.

**c. Reasonable accommodation as a statutory obligation.** In disability-based discrimination, the most overlooked area is the refusal to provide reasonable accommodation. However, many disabled people associate reasonable accommodation with "help", believing it merely to be about moral care and not a statutory obligation. When changing people's consciousness, it is necessary to make them aware of the principle of reasonable accommodation according to specific needs, and without creating undue burden, make the necessary and appropriate changes and adjustments to ensure that disabled people enjoy and perhaps exercise all their human rights and basic freedoms on an equal basis with others.

## **2. Relying on the law and perseverance**

Although the system of disability law in China is not perfect, a relatively complete legal hierarchy and a large number of legal provisions still provide a wealth of regulations to protect disability rights. The Jixiang Airways case in which I participated reflects the significance of the role of the law and persistence.

Plaintiffs Zhang and Sheng are two physically disabled people who have to use a wheelchair. On November 17, 2015 they bought tickets from the defendant Jixiang Airways Co. Ltd for flight number HO032 on November 19, 2015, departing from Phoenix airport in Sanya, destination Zhoushuizi Airport in Dalian, stopping over in Wenzhou. The departure time was 12.40 and the arrival time was 18.25. The plane was far away so the passengers had to take an airport shuttle bus. Because of the plaintiffs' physical situation lifting equipment would have to be used for them to board. On the morning of November 19, 2015, the two plaintiffs went to the check-in desk at Sanya airport and asked for their wheelchairs to be checked in and for special narrow wheelchairs to be provided on board. But the defendant's staff refused to check them in on the grounds that the plaintiffs did not have the ability to manage by themselves and were unaccompanied. They did not meet the company's carrier requirements. The defendant's staff did not apply to the airport for lifting equipment to allow them to board. Sanya Airport actually did have the lifting equipment for disabled people for that day and that time. On the same day, unable to board their scheduled

flight, the plaintiffs bought new tickets for Air China flight number CA1804 from Sanya to Beijing at 14:25 on the same day, and boarded the flight via the airport gangway. They parted the next day at 08:25 and 07:13 respectively and took high-speed trains from Beijing back to Yingkou and Gongzhuling.

After the two plaintiffs had made several unsuccessful representations to the defendant, they separately filed lawsuits with the People's Court of Pudong New District in Shanghai, claiming that the defendant had infringed on their equal right of travel, and requesting adjudication: that the defendant Jixiang Airways should make a formal apology on its official website, Weibo and WeChat; it should pay compensation for the price difference of the new tickets, for the high-speed rail tickets and for mental damage; and the defendant should modify its internal carrier procedures to ensure that passengers with disabilities would no longer be refused travel.

In the first hearing, the court held that the case was a contract dispute. The plaintiffs had not filed a lawsuit about violation of a contract, insisting on suing for infringement of rights. There was no basis in law for this, hence it did not support the plaintiff's claim. After the second hearing, both parties reached an agreement to mediate. Jixiang Airways made a formal apology to the two appellants in court, and paid financial compensation. The court issued a conciliation statement accordingly and said it would also make a judicial recommendation to the airline company and to Air China to ensure that people with disabilities have the right to travel on an equal basis.

However, the two plaintiffs persisted in resolving the issue within the framework of the law. They obtained the full support of various stakeholders including the law, media and public interest groups and eventually achieved their hoped-for result. In particular, the court, via adjudication, attempted to make the outcome of this case universally binding and to ensure to a greater degree the rights of disabled people to air travel. Perhaps this is the greatest significance of the case. At the same time, the airline company recognized its mistakes and promised to make an effort to improve. These are all the positive results of the lawsuit.

Of course, two factors are necessary for persisting with litigation for the successful resolution of a dispute. One is the participation of lawyers who are familiar with disability law. After all, not every legal worker has an awareness of disability equality and understanding of the provisions of disability law. Only someone who is familiar with public interest disability litigation will be equal to the task. Secondly, media reports and public opinion. The reason why such litigation is called disability public interest litigation is because the result not only affects the parties involved in the case, but is also connected with the realization of rights of disabled people in similar situations. With media coverage, the public can gain a better understanding of disability rights, and thus help cases promote the rule of law.

### **3. Different situations, flexible response**

After affirming the law and safeguarding the positive effects for disability rights in public interest litigation, the different situations encountered in litigation allow for flexible choices and responses between resolutely seeking judgment and seeking reconciliation with the other party. In the future, equal rights of people with disabilities in similar incidents may be effectively guaranteed and respected. Furthermore, it will minimize the burden of disabled people in the process of realizing their rights.

The reason why active reconciliation with defendants is considered to be an important way to realize disability rights is because the ultimate purpose of disability public interest litigation is not necessarily to obtain a court judgment but to prompt government departments or enterprises to correct the original discriminatory rule or behaviour so that the equal rights of persons with disabilities can be swiftly respected and guaranteed without the need to choose litigation as a secondary measure. The case of Ren Xing v. the Agricultural Bank of China is good practice.

On the morning of February 24, 2016, Ren Xing, a young blind man who lives in Yuhua District, Changsha City, and his wife who has a visual impairment, went to the Hongxing branch of the Agricultural Bank of China in Changsha to open bank accounts. When they arrived at the bank, Ren Xing was told by the bank staff: "If you can't see, can't fill in a form, can't sign your name, can't enter a password, then you can't open an account. If you want to open one then call your guardian."

After this happened, Ren Xing called the bank's service hotline 95599, its business outlets, and the Hunan province bank regulatory bureau on four separate occasions to complain. At noon on February 25, the person in charge of the Changsha Branch of Agricultural Bank of China phoned Ren Xing: "If you can't fill in the form, can't sign your name, can't enter a password, then you can't open an account. If you want to open an account, you must bring your guardian. This is stipulated in Article 16 of the General Rules of Civil Law. " The person in charge read Ren Xing Article 16 of the Civil Law.

After many fruitless conversations and complaints, on the morning of March 28, Ren Xing hired a public welfare lawyer to file a civil lawsuit with Changsha Yuhua District People's Court, demanding that the Hongxing branch of the Agricultural Bank of China make a formal apology, promise to cease discrimination based on disability in their business dealings, pay compensation for mental damage, and bear the costs of the litigation (according to a report on the Changsha TV Politics and Law channel, on March 28, 2016).

After the lawsuit was filed, the bank changed its previously hard-line attitude and repeatedly took the initiative to communicate with Ren Xing and his lawyer in the hopes of facilitating conciliation. After much negotiation, both sides finally reached a settlement on April 2. The bank staff apologized to Ren Xing, promised to provide reasonable accommodation for disabled customers in the future, and paid satisfactory compensation. Ren Xing agreed to retract his complaint, and did not publish any adverse comments about the bank in the media or the Internet. This was the first public interest litigation in Hunan involving barrier-free access in a bank that achieved a result that both parties were satisfied with.

Jin Xi: Were you satisfied with the result?

Ren: Yes, I was. The most important thing was that afterwards the head of the Hunan Agricultural Bank specifically called me and said that if any visually impaired people in Hunan province who encounter any problems with signatures when they do business with the bank, they should contact him directly and he would mediate a solution.

Jin Xi: Did you ever contact him for anything like this?

Ren: There were two occasions when the bank refused to do business with my visually impaired friend because of the signature problem. I called him and he quickly settled the situation.

There may be readers who think that a solution mediated by a leader has a tinge of 'enlightened government brought about by virtuous leaders' (*renzhi* 人治). But at the moment, front-line workers know little about disabled people. Their understanding of the concept of disability remains at an individual level or a medical level. They hold the stereotype that disabled people have limited ability, need a guardian, and lack the self-awareness to act on their own. Consciously or unconsciously they classify disabled clients as people with low credit ratings and high financial risk. A direct consequence of this lack of awareness of people with disabilities, is that within the banking industry even rules that facilitate services for disabled people are intentionally or unintentionally overlooked, and staff may even be unaware that such rules exist. Therefore, the key to solving this problem is to enable front-line staff in public service institutions such as banks to have the opportunity to have contact with people with disabilities to understand their true

capabilities and needs. Understanding and communication are the best ways to remove discrimination and prejudice and, in practice, the approval of leaders may be the most direct and effective key to opening the door of understanding.

Of course, not all cases are suitable for this type of settlement, which mainly applies to litigation related to reasonable accommodation. After all, at present, there is still no consensus on an understanding of such concepts as "discrimination" and "reasonable accommodation" in China. Seeking adjudication is still fairly risky. There is also the effect of a culture of "helping the disabled" and, in recent years, the spread of the concept of the rule of law and equality. Through active communication, it was fairly easy to reach a settlement with the defendant, prompting them to actively redress the situation and make efforts to improve.

In other cases concerning direct discrimination from the rules, especially in the situation where Liu Xu, Li Ling, Wang Li and others' rights were harmed because of the standards of the physical examination, defendants tend to assume that they are in the right because there are clear rules of conduct. There is relatively little room for conciliation. Because the defendants are not the rule-makers, it is difficult for them to change the discriminatory rules themselves even if a settlement is reached, and disabled people will continue to be rejected in future. Therefore, there is perhaps a greater possibility here that the rules could be changed.

#### **4. Some remarks on legislative measures**

The above three sections discuss how people with disabilities, lawyers and public welfare people can enhance the legal protection of disability rights within the existing legal framework. However, the solution to many problems still requires an adjustment and perfection of the existing laws and regulations. This section proposes a number of legislative recommendations for the legislator or other rule-making departments to consider, and which could also serve as a direction for policy advocacy for colleagues in the future.

a. Gradually put an end to direct discrimination from the rules themselves. Abolish the existing physical examination standards, including the General Standard for Physical Examination for Civil Servants (Provisional), for entering public service examinations, or at least change the unreasonable restrictions for those with disabilities, so that government departments can truly become examples of supporting equal employment for people with disabilities.

b. Raise the legal level of standard documents in each trade and industry and make specific stipulations for the provision of equal and convenient services for disabled people, so that the industries will have greater awareness and stronger powers of enforcement for the better implementation of rules that are clear.

c. The law should define and explain such concepts as "discrimination" and "reasonable accommodation" clearly so that "discrimination" can be applied as a legal concept rather than just as a moral evaluation, thus reducing the obstacles in anti-discrimination cases, and at the same making people aware that a refusal to provide reasonable accommodation is illegal.

d. There should be more specific regulations in disability law about the legal consequences of violating the law. Avoiding the embarrassment of a lawsuit, as regards the behaviour of the infringer, can be found in disability law, but the legal consequences can only be found in civil law or legal documents. At the same time, relatively clear legal consequences could also encourage relevant governments and enterprises to take their obligations in the aspect of disability rights protection more seriously.

e. The law should raise the mandatory requirements and standards for the design of accessible information networks. An accessible system should be a statutory item in website construction and

software development, and would make an abstract regulation about information accessibility a reality.

f. The law should stipulate rules regarding violation of equal disability rights and what constitutes discrimination against disability, and support compensation for mental damage. At present, the law does not impose additional legal responsibility on those who discriminate, thus lowering the cost of violating the law. At the same time, it is very difficult for disabled people to obtain direct economic compensation in public interest disability litigation, which greatly affects their initiative in claiming their rights. Of course, I fear that such a system would be very controversial.

g. A law should be established in public interest litigation for a transfer payment system for lawyers' fees, i.e the plaintiff can claim the lawyer's fee as a statutory claim for damages, with the defendant to pay. Since the plaintiffs in disability public interest litigation are mostly natural persons (*ziranren* 自然人), and the direct economic benefits that may be obtained in litigation are limited, it is very difficult for the plaintiff to hire a commercial lawyer to participate in the litigation. Furthermore, public interest cases also cost a lot of time and effort. Without definite protection of their income, lawyers are hardly able to guarantee their continuous participation even if they have feelings about public welfare. The defendants in such litigation are mostly government departments or large-scale enterprises with a strong economic base. This means that when a lawsuit is lost, the plaintiff's legal fees will be paid, which is not only fair in principle but may also be regarded as a contribution towards dispelling discrimination and upholding the rule of law.

h. Include litigation related to equal disability rights within the scope of legal aid. Legal aid is a free legal service provided by the state to impoverished parties and other disadvantaged groups. It also has the function of safeguarding judicial fairness and social justice. If a transfer payment system for lawyers' fees cannot be established quickly, it is generally advisable that disability public interest litigation should fall within the scope of legal aid. Having the government pay the fees of the legal aid lawyer may also be considered an acceptable choice.

i. Disability law should be incorporated into the teaching content of university law schools. Classes could be attended by disabled people who are aware of their rights and legal regulations. When necessary, the law could form part of the examination for the national legal professional qualification, and at source would enhance legal practitioners' level of understanding and grasp of the law.

## **5. Tentative conclusions, looking forward to the future**

Rather than trying to reach a certain result or conclusion, this study attempts to explore new ways of thinking about this type of research from the perspective of people with disabilities. During the course of my research, I have had formal and informal exchanges with many disabled people and other stakeholders. What was particularly gratifying was that after talking with me, many people gained a new understanding of the real abilities and needs of people with disabilities and the international conventions and domestic laws and regulations that protect disability rights. They were willing to re-examine the phenomenon of disability from social, rights and development perspectives. Perhaps this is one of the greatest implications of this research.

Of course, due to limitations of time and space, this report only focuses on the legal system for ensuring the rights of disabled people from a vertical perspective, and cases with differing outcomes and the problems of disabled people themselves and of the legal system. It does not focus on education, employment, barrier-free environments and social welfare, etc. and other spheres of disabled people's lives from a horizontal perspective. Each of these areas has its own theoretical basis and legal provisions and typical case studies. Each specialized area would need to be covered by a similar research report. In particular it needs to be pointed out that due to limitations of time and professional research, this study involves a relatively small number of



cases concerning legal capacity and guardianship system of persons with mental disabilities. This may be because I had few opportunities of becoming acquainted with and approaching such parties. However, it is not easy to discover many real details about such cases simply by reading documents transcribed by others. In addition, this is a very complicated and specialized field that requires systematic research and detailed investigation.

Another regret in this report is that when we gain a deeper understanding of a case, we often listen more to the voices of the disabled party, and the utterances of the other participants in the cases are missing. In particular, there is a lack of in-depth exchanges with defendants. This stems partly from the inadequacy of my choice of research and my research ability, but also partly from the defendants themselves, who are the infringers, and who often tend to take evasive action until after the dust settles.

This section is only a tentative conclusion, this study is nothing but a comma in an unfinished work. Future research on the legal protection of the rights of persons with disabilities will continue to evolve in a specialized and sophisticated manner. It will insist on the dominant position of persons with disabilities and the common participation of multi-disciplinary knowledge. In the course of this study, I have always enjoyed the full support of the legal, public welfare, and media communities and of many disabled friends. I am most grateful for all the interviews and consultations I have carried out from time to time that were accepted with the greatest degree of openness and patience.