

Executive summary

Humanising Justice



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*International report from Voices for Justice:
Communicating with Victims of Crime with Disability*

The justice system and its symbols are scary. In most places, courts are not about justice, they are about power. For anyone, facing these symbols of power is disabling. Start with thinking about de-focusing the power; the focus should be on justice. It is really about the humanisation of the justice system itself and making it accessible for all. (Gábor Gombos, former member of the United Nations Committee on the Rights of Persons with Disabilities and Senior Adviser to Voices for Justice project)

Voices for Justice

The Voices for Justice project focuses on the rights and experiences of people with disabilities who are victims of crime and how they access justice. It is an EU co-funded project with 9 partner organisations, taking place across seven countries: Bulgaria, Croatia, Czechia, Lithuania, Romania, Slovakia, Slovenia.

Victims with disabilities face insurmountable barriers that block their access to criminal justice in Europe. As a result, they are denied the opportunity to tell their stories and to seek effective remedies. Recent research reports that women with disabilities are two to five times more likely to be victims of violence¹. The European Union Fundamental Rights Agency found that 19% of persons with disabilities report being physically attacked compared with 9% of the population as a whole². People with psychosocial and intellectual disabilities experience specific forms of ill-treatment and abuse on the basis of disability, are detained against their will in institutions and medicated without their consent³. Yet, data and information are not routinely collected or analysed, and the experiences and voices of victims with disabilities are not taken into account across the EU. A complete reorientation of Europe's criminal and civil complaint, investigation and adjudication frameworks, systems, institutions and culture is needed for the benefit of all victims of crime. The scale of this challenge and necessary transformation is a pressing theme in the *Humanising Justice* international report for the Voices for Justice project.

This report uses the landmark United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities (UN Access to Justice Principles)⁴ as the basis for a normative assessment of the strengths and gaps in the access to justice provisions of the European Union's Victims' Rights Directive⁵. Drawing on evidence from seven national research reports, we show how gaps in the Directive are manifested in national legal frameworks, policies and practices. The UN Access to Justice Principles set clear obligations and explain, in detail, the practical steps that can secure access to justice for people with disabilities. And while key provisions of the European

¹. 'Ensuring the Rights of Victims with Disabilities' (European Disability Forum, 7 July 2020) <<https://www.edf-feph.org/newsroom-news-ensuring-rights-victims-disabilities/>> accessed 29 April 2022.

². Fundamental Rights Agency, Fundamental Rights Survey, 2020, Violence and harassment <<https://fra.europa.eu/en/data-and-maps/2021/frs>> accessed 9 May 2022.

³. Marcello Sacco, 2021. 'The Unconvicted Detention of Persons with Mental Impairments: The ECHR "Unsound" That Does Not Sound' P. 153 <<http://elea.unisa.it:8080/xmlui/handle/10556/5277>> accessed 29 April 2022.

⁴. United Nations Special Rapporteur on the Rights of Persons with Disabilities, United Nations Committee on the Rights of Persons with Disabilities and Special Envoy of the Secretary-General of the United Nations on Disability and Accessibility, 'International Principles and Guidelines on Access to Justice for Persons with Disabilities' (Geneva: United Nations, 2020). The report focuses on the Principles that are most relevant to the focus of the research. These are Principles 1,2,3,4,6,8, and 10 (element of Principle 9 are also considered in the Final Report). <https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf> accessed on 11 May 2022.

⁵. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029>> accessed 11 May 2022.

Union Victims' Rights Directive help ensure that reporting, investigation and criminal proceedings are victim-focused, and recognise victims' rights to information and communication, the overall framework of the Directive must be strengthened in specific ways to meet international obligations on access to justice, and specifically obligations under the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD).

In its aspirations to create a more victim-centric approach to criminal justice, important conversations are on-going within the EU, aiming to bring forth a criminal justice system based on the principles of human rights and human dignity, shaped by existing EU obligations regarding victims' rights to an effective remedy and investigation. People with disabilities must be involved in those debates and innovations.

First steps towards transformation

1. The Victims' Rights Directive should be amended to explicitly guarantee the right to legal capacity in criminal proceedings. It should ensure that victims are able to access and directly participate in all stages of the justice process, including assessment of the supports required to remove barriers and to have effective access to justice. It should explicitly guarantee access to information and communications for persons with disabilities, together with guarantees of reasonable and procedural accommodations and enhanced accessibility of support services in and throughout criminal proceedings.
2. There is a need for an EU strategy on victims with disabilities that articulates a vision for and framework of equal access to justice for people with disabilities, which can be implemented at the national level.
3. Guidance, training courses and curricula based on UN Access to Justice Principles should be developed for Member States in partnership with people with disabilities.
4. The innovative practices of individuals creatively supporting victims with disabilities in accessing their rights to participate must be actively nurtured and supported.
5. All Member States must fully transpose and implement the Victims' Rights Directive true to its spirit and taking account of the recommendations in this report. It is important that the European Commission exercises its responsibilities for oversight, monitoring and the initiation of infringement proceedings. This includes developing a data collection framework that allows an understanding of victims' experiences of crimes, gaps in access to justice and a prioritisation of action.

Key findings

'A blank space'

While access to justice is fundamental for the enjoyment and fulfilment of all human rights, many barriers prevent persons with disabilities from accessing justice on an equal basis with others. Such barriers include restrictions on the exercise of legal capacity; lack of physical access to justice facilities, such as courts and police stations; lack of accessible transportation to and from these facilities; obstacles in accessing legal assistance and representation; lack of information in accessible formats; paternalistic or negative attitudes questioning the abilities of persons with disabilities to participate during all phases of the administration of justice; and lack of training for professionals working in the field of justice. In the justice system, persons with disabilities are often considered to be unworthy of, unable to benefit from or even likely to be harmed by due process protection provided to all other citizens. (United Nations Principles and Guidelines on Access to Justice for Persons with Disabilities, 2020, p.6)

The profound absence of people with disabilities exercising their participation rights as victims and witnesses is described by the Voice for Justice Consortium as a 'blank space'. In practice this was manifested as national researchers struggled to access people with disabilities who have come into contact with the criminal justice system as victims, and to identify legal professionals who have encountered victims with disabilities in their work. This 'blank space' is caused by entrenched physical, attitudinal, institutional, cultural and legal barriers, combined with systematic violations of procedural rights, the right to legal capacity and the right to testify, leaving persons with disabilities with no opportunity to be heard. The lack of data on the prevalence and impact of crimes against people with disabilities, together with the lack of information on justice responses including reporting, investigation, prosecutions and court processes, adds to their invisibility and are clear signifiers that Member States are not meeting their fundamental rights obligations. Systematic failures to protect these rights create feelings of impunity for offenders who target victims they know will not be believed, protected, or taken seriously.

The findings and analysis are set out below, evaluated in relation to the United Nations Principles and Guidelines on Access to Justice for Persons with Disabilities, with a focus on core aspects that are necessary to achieve participation in practice, particularly regarding information and effective communication.

Principle 1 'all persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability.'

The interesting thing for me that was throughout the whole pre-trial phase the victim was neither interviewed, not even as a witness, nor he was personally informed about any rights... information about [his] rights was given in the standard way by means of a notification addressed to his guardian who was a person without any emotional or any other relationship with the patient. This was an employee of a social care home at which the victim used to reside, thus he was not interested in [any] way... it was formally checked that someone was informed but there was sufficient information that this person has not been in contact with the victim. (Interview with a district judge. Genova and Krasteva, Bulgaria, 2022, p.29)

States must ensure that the legal capacity of people with disabilities is recognized at all levels of the criminal justice system, without discrimination. We found that the Directive's provisions and corresponding European Commission Guidance do not sufficiently acknowledge or counter the violation of the right to legal capacity and the right to testify. In fact, the right to legal capacity is not guaranteed or mentioned by the Directive. 'Emotional' and 'intellectual' capacity are referred to in the recitals of the Directive as factors to 'be taken into account', without prefacing the obligations of States to guarantee legal capacity equally for all. This omission allows for an interpretation that 'lack of capacity' can be grounds to curtail or reduce the participation of victims with disabilities in criminal justice proceedings.

At the national level, discriminatory legal frameworks and practices appear to be routine. Police and judicial authorities regularly recognise an appointed guardian as a 'replacement' for the victim with regard to their participation rights, and official 'credibility' assessments interfere with victims' rights to testify. Although these laws, policies and actions are violations of the rights set out in the CRPD, governments, courts and individual professionals do not see this to be the case. On the contrary, state laws sanction the practice of recognising or appointing a guardian as an acceptable way of fulfilling the Directive obligations pertaining to information and communication.

Principle 2: 'Facilities and services must be universally accessible to ensure equal access to justice without discrimination of persons with disabilities.'

He explains that the area [police station] is hardly accessible for a person with a disability and in such cases they carry out the interview at the parking lot. (Interview with an investigating police officer. Genova and Krasteva, Bulgaria, 2022, p.29)

Analyses of publications provided by different public authorities related to criminal proceedings show that accessibility is a significant issue for several reasons. But mostly they are overcrowded with information, the language is too complex, the font is too small, the contrast too low and therefore they are not suitable for people with intellectual disabilities. (Kapus et al., Slovenia, 2022, p.26)

Information about the criminal justice system — including victims' rights — must be easily and publicly accessible. The principles of universal design must be applied to ensure that people with a range of impairments can access facilities and services and that individuals are treated with dignity and respect. Furthermore, any limitation to physical accessibility, or information and communication, can be addressed by ensuring reasonable accommodations and access to a range of support services, as well as informal supports that a person chooses.

There is little evidence that the authorities in the seven countries have taken any steps in their national laws, policies or practices to ensure that physical facilities, or information and communication services are built, developed and provided on the basis of the principles of universal design. Reasonable accommodations are not routinely available. Several researchers reported national provisions had been made to improve physical access to police and judicial buildings. Additionally, sign language rights were reported to be in place in all countries. In some countries, other forms of communication support were reported to be referred to in national documents, however, with limited guidance on what such support might entail.

Principle 3: ‘Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations.’

Although the individual needs assessment could and should be used to assess the needs of victims, it is not recognized as a tool serving a better inclusion of persons with disabilities in criminal procedures. Furthermore, it mostly focuses on determining the required protection measures to prevent additional intimidation and secondary victimisation during the procedure, but not on ensuring the right to information and effective communication. (Špek and Štahan, Croatia, 2022, p.26)

The Directive does not provide an effective framework that guides states to meet their obligations to ensure that victims with disabilities can access their right to appropriate procedural accommodations

A victim-centred and disability-sensitive approach to individual assessment should start with the identification of barriers to participation, and guarantee the provision of individualised support, reasonable and procedural accommodations, with a view to maintaining dignity, choice and control at all times.

Article 22 must be revisited to reflect a rights-based, not a needs based approach to access to justice. In practical terms, this could entail a reframing of the Article to re-emphasise victims’ right to participate and to justice, and the State’s obligation to give effect to these rights. As such, rather than being an assessment of victims’ individual vulnerabilities and ‘need’ for protection, Article 22 is an assessment, in dialogue with victims, of the barriers that need to be removed, and the adjustments to be put in place for them to access their rights under the Directive. The procedural adjustments as expressed in Article 23, must be expanded to include all rights under the Directive, including access to communication and information rights. Overall, the Directive’s procedural accommodation assessment and implementation framework must be expanded to include all necessary procedural accommodations to ensure equal access to justice, including access to communication and information rights.

In dialogue with victims with disabilities, explore best practice regarding identifying and meeting needs, with appropriate information-sharing throughout the criminal justice process.

Principle 4: ‘Persons with disabilities have the right to access legal notices and information in a timely and accessible manner on an equal basis with others.’

A victim with psychosocial disabilities was handed a leaflet, and not informed of support services or of legal services, the Victim had to search for all the relevant information about the proceedings herself...

She found a lawyer whose main experience was working with defendants. “I hardly knew anything. I really had to search for information on the Internet, what was going to happen. I had no idea. The criminal proceedings were very stressful for me.”

The offender was first placed in pre-trial detention, then imprisoned, but in both cases, the Victim learned that he was released from the Internet media. (Sležková and Pastorek, Czechia, 2022, p.33)

The UN Access to Justice Principles describe ten ways that access to information can be ensured, including through the provision of sign language, video and audio guides, telephone-line advice and referral services, facilitated communication, braille, etc. These specific measures are not mentioned in the Directive or the associated guidance, and the recitals of the Directive merely suggest Member States ‘take into account’ communication ‘difficulties’. This approach reflects stereotypes concerning disability and fails to address the environmental, physical and attitudinal barriers that need to be removed and rectified in order to enable effective information-sharing and communication. The approach also introduces the risk that national authorities, in interpreting the need to ‘take into account’ disability and communication difficulties, would share information and communicate with the guardian rather than directly with the victim. This may then result in a failure to uphold the legal capacity and the will and preference of victims with disabilities⁶. In practice, our national analyses show that where a guardian is appointed, the police often bypass the victim entirely and ‘fulfil’ their obligation of informing them by communicating directly and solely with the guardian.

The Member States covered in this research have legally transposed general requirements on access to information set out in the Directive, however there are issues with implementation, and few examples of efforts to ensure that legal notices and information are accessible to victims with disabilities. Persons with disabilities living in institutions, who are thereby physically restricted from accessing the outside world, and who are under the direct supervision of staff, face particularly high barriers.

Principle 6: ‘Persons with disabilities have the right to free or affordable legal assistance.’

A victim with a mental disability would thus first have to prepare a claim for damages and fill in an application proving [their] financial and material condition and even in such case [they] still do not have any legal certainty that [they] will be appointed an attorney for free because the final decision is on the judge. It is obvious that all these steps may render free legal aid practically inaccessible for victims with mental disabilities. (Sležková and Pastorek, Slovakia, 2022, p.40)

Access, through legal aid, to a suitably qualified and experienced lawyer can be a communication and information bridge for people with disabilities, and thus a critical factor ensuring their effective participation in the justice system. The national partners who have years of experience in supporting victims with disabilities identified this right as potentially central to guaranteeing their access to justice.

Article 13 of the Victims’ Rights Directive, the right to legal aid, imposes the obligation on Member States to ensure that victims have access to legal aid where they are party to criminal proceedings.⁷ In most countries, free legal aid appears to depend on the type of crime, or vague definitions of ‘vulnerability’, which do not align with standards under the UN Access to Justice Principles. The victim is often required to apply for free legal assistance, which is an administrative burden that needs to be completed within strict time limits, and depends on the knowledge, good will and cooperation of the police. In effect, legal assistance is often completely inaccessible to people with disabilities, and not in line with Article 13 of the Directive.

⁶. According to General comment no. 1 (2014), Article 12, Equal recognition before the law : corrigendum, substitute decision-making may include plenary guardianship, judicial interdiction and partial guardianship whereby ‘any decision made by a substitute decision maker is based on what is believed to be in the objective “best interests” of the person concerned, as opposed to being based on the person’s own will and preferences.’ <<https://digitallibrary.un.org/record/1483330?ln=en>> accessed 11 May 2022.

Principle 8: ‘Persons with disabilities have the right to report complaints and initiate legal proceedings concerning human rights violations and crimes, have their complaints investigated and be afforded effective remedies.’

We live on the ground floor and we get harassed a lot. We called the police about it several times. We wrote a complaint to the police, because we wanted this harassment to stop. But there was no written reply. They say that we are weird. (Kapus et al., Slovenia, 2022, p.27)

Principle 8 goes to the heart of tackling the ‘blank space’ identified by the Voices for Justice Consortium; people with disabilities experience a range of human rights violations and crimes, including torture and ill-treatment, which are not recognised in national criminal or civil legislative frameworks. This was one of the most striking findings from both the international and national research undertaken, even though it was not the main focus for the Voice for Justice project.

National evidence shows that victims experience high barriers to reporting complaints and initiating proceedings. In some Member States, the lack of a clear definition and understanding of ‘victim’ hinders victims from accessing their right to effective investigation and remedy, most notably when victim status might not be recognised until ‘the investigation body collects enough evidence that the crime has happened and the perpetrator is known.’

In effect, all countries require a comprehensive investigation and remedies framework that ensures victims of crime receive recognition and reparations for the harms done. This goes beyond the scope of the Victims’ Rights Directive, but it is crucial that violations and abuses against persons with disabilities are fully and legally recognised, and that the right remedies are put in place which are accessible to people with disabilities.

Principle 10: ‘All those working in the justice system must be provided with awareness-raising and training programmes addressing the rights of persons with disabilities, in particular in the context of access to justice.’

The findings of this project show that there are insufficient personnel within social, police and judicial bodies with special education on communicating with people with disabilities. In some cases, they are only trained to recognise disability, but unable to communicate adequately, unable to carry out individual needs assessments and they often need an additional expert with appropriate knowledge and skills, or support for dealing with people with mental disabilities. Thus, the right to information and effective communication of people with disability is not fully granted in practice and it depends on the initiative of the victim in finding solutions. (Špek and Štahan, Croatia, 2022, p.29)

The Victim Rights’ Directive’s training obligations under Article 25 do not specifically mention disability. In contrast, UN Access to Justice Principles detail how people with disabilities should be directly involved in these trainings and the content of the training. Our research found no examples of specialist training for professionals working with victims with disabilities, for people with disabilities themselves or their families, and no evidence that such training would be based on a human rights model of disability or on the States’ obligations to eliminate disability discrimination in the justice system.

In applying this Directive, Member States should ensure that victims with disabilities are able to benefit fully from the rights set out in this Directive, on an equal basis with others, including by facilitating the accessibility to premises where criminal proceedings are conducted and access to information. (European Union's Victims' Rights Directive, Directive 2012/29/EU, para 15)

Voices for Justice National Reports and other resources

National reports are available in English, national language and English easy-to-read.
<https://validity.ngo/projects-2/voices-for-justice/publications-and-resources/>

Voices for Justice

The Voices for Justice project focuses on the rights and experiences of people with disabilities who are victims of crime and how they access justice. Voices for Justice is an EU co-funded project taking place across 7 countries, carrying out research at national level, identifying promising practices, creating practical tools for professionals and victims in the criminal justice system, and supporting international standards for the protection of the rights of people with disabilities who are victims of crime. The project references in particular the obligations set out in the European Union Victims' Right Directive (Directive 2012/29/EU) and the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

The project has the following partners:

- Coordinator: Validity Foundation
- Bulgaria: Chance & Support Association
- Croatia: Victim and Witness Support Service, VWSS
- Czechia and Slovakia: FORUM for Human Rights
- Lithuania: Mental Health Perspectives, PSP
- Romania: Centre for Legal Resources
- Slovenia: PIC – Legal Center for the Protection of Human Rights and the Environment; Social Protection Institute of the Republic of Slovenia, IRRSV; and University of Ljubljana

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MENTAL
HEALTH
PERSPECTIVES


University of Ljubljana


UDRUGA ZA PODRŠKU ŽRTVAMA I SVJEDOCIMA

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