Humanising Justice

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

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Validity Foundation

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Executive summary: Humanising Justice

> *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 violence.[2] 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 whole.[3] 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 consent.[4] 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.

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2 '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.

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

4 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, 2022.

This report uses the landmark United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities (UN Access to Justice Principles)[5] 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 Directive.[6] 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 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.

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5 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 11 May, 2022.

6 European Union's Victims' Rights Directive (Directive 2012/29/EU) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029> accessed 9 May, 2022.

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 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 International 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 human 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 recognised 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 recognised 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 accommodations to be put in place for them to access their rights under the Directive. The procedural accommodations 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 disabilities[7]. 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.[8] 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.

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7 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.

European Union's Victims' Rights Directive (Directive 2012/29/EU), article 13, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029> accessed May 9, 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)*

Glossary

Accessibility/Accessible

Easy to use or be involved with.[9]

The principle of accessibility aims 'to enable persons with disabilities to live independently and participate fully in all aspects of life'. It includes access to the physical environment (physical accessibility), as well as access to information and communications (cognitive accessibility). (UNCRPD Article 9)

Communication

"Communication" includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology. (UN CRPD Article 2)

"Language" includes spoken and signed languages and other forms of non-spoken languages. (UN CRPD Article 2)

Disability

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. (UN CRPD Article 1)

Discrimination

Treating someone worse than other people because of who they are or where they come from.[10]

"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation. (UN CRPD Article 2)

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9 EasyRead Version of International Principles and Guidelines on access to justice for persons with disabilities. 'Making sure people with disabilities get justice', Section 6 'What the words mean'. <https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-easy-en.pdf> 19 May, 2022.

10 Ibid.

Easy read (easy-to-read or EasyRead)

Easy read/Easy-to-read is written information which is accessible for people with intellectual and learning disabilities.[11]

European Union's Victims' Rights Directive – VRD/the Directive

The Victims' Rights Directive lays down a set of binding rights for victims and imposes clear obligations on EU Member States to ensure these rights are fully accessible in practice. It establishes new rights which ensure all victims are 'treated in a respectful, sensitive & professional manner without discrimination of any kind based on any ground'.[12]

Guardianship

Guardianship is a form of surrogate decision making, usually imposed after a court proceeding, that substitutes as decision maker another individual (the guardian) for the individual in question (called variously the ward or the allegedly incapacitated person).[13]

Intermediaries

Persons who work, as required, with justice system personnel and persons with disabilities to ensure effective communication during legal proceedings. They support persons with disabilities to understand and make informed choices, making sure that things are explained and talked about in ways that they can understand and that appropriate accommodations and support are provided. Intermediaries are neutral and they do not speak for persons with disabilities or for the justice system, nor do they lead or influence decisions or outcomes.[14]

Justice

The rules and laws that mean people behave in a way that is fair and equal for everyone.[15]

Legal capacity

The capacity to be both a holder of rights and an actor under the law.[16]

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11 Just4All Glossary on the Rights of Persons with Disabilities, available at,< https://78dde82f-f3fc-4414-a854-627948964997.filesusr.com/ugd/e65341_3c2fe2e3929e4809bf1c8b0a851e9b33.docx?dn=Glossary%20on%20Rights%20of%20Persons%20with%20Disab> accessed 7 June, 2022.

12 European Union's Victims' Rights Directive (Directive 2012/29/EU) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029> accessed May 9, 2022.

13 Dinerstein, Robert D. "Implementing Legal Capacity Under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road From Guardianship to Supported Decision-Making." Human Rights Brief 19, no. 2 (2012), pp 8-12. <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1816&context=hrbrief> accessed 24 May, 2022.

14 UN Access to Justice Principles, p.9, <https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf>, accessed 7 June, 2022.

15 EasyRead Version of International Principles and Guidelines on access to justice for persons with disabilities. 'Making sure people with disabilities get justice', Section 6 'What the words mean'.

16 Ibid.

Legal capacity to be a holder of rights entitles persons to full protection of their rights by the legal system. Legal capacity to act under the law recognises that person as an agent with the power to engage in transactions and create, modify or end legal relationships.[17]

Medical model of disability

The medical model has been the most dominant model of disability historically. This model views disability as an impairment or illness which requires treatment or fixing. Disability is considered by this model to be deviating from the normal health status. In following the medical mode, legislators and policy makers tend to focus on compensating disabled persons for their disabilities and providing them with 'special' segregated services.

Procedural accommodations

All necessary and appropriate modifications and adjustments in the context of access to justice, where needed in a particular case, to ensure the participation of persons with disabilities on an equal basis with others. It is directly linked to principles of non-discrimination.[18]

Reasonable accommodations

"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. (UN CRPD Article 2)

Repeat victimisation

Repeat victimization, or revictimization, occurs when the same type of crime incident is experienced by the same—or virtually the same—victim or target within a specific period of time such as a year.

Secondary victimisation

Secondary victimization has been defined as negative social or societal reaction in consequence of the primary victimization and it is experienced as further violation of the rights or entitlements of the victim[6]. Examples may include; repeated interrogation about the same facts, repeated exposure to the perpetrator, insensitive media reporting of the case, etc.

United Nations Convention on the Rights of Persons with Disabilities – UN CRPD/CRPD/the Convention

The UN CRPD is an international human rights treaty which was adopted in 2006. The purpose of the present Convention is to promote, protect and ensure the full and equal

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17 Committee on the Rights of Persons with Disabilities, general comment No. 1 (2014) on equal recognition before the law, para. 12, < https://atlas-of-torture.org/en/entity/6077tnbn376?page=3>, accessed 7 June, 2022.

18 UN Access to Justice Principles, p.9, <https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf> accessed 7 June, 2022.

enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.[19]

United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities – UN Access to Justice Principles

The International Principles and Guidelines on Access to Justice for Persons with Disabilities are a practical tool to support States in designing and implementing justice systems that provide equal access to justice for persons with disabilities, in line with international human rights standards.[20]

Universal design

"Universal design" is the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. Universal design shall not exclude assistive devices for particular groups of persons with disabilities where this is needed. (UN CRPD Article 2)

Victim

The person who is harmed or injured by an accident or crime.[21]

In the EU Victims' Rights Directive Article 2, victim is defined as follows,

> (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;
>
> (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death;[22]

19 UN General Assembly, Convention on the Rights of Persons with Disabilities, 13 December 2006, A/RES/61/106, Article 1 (Purpose), <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>, accessed 7 June, 2022.

20 United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities (Geneva 2020), <https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/10/Access-to-Justice-EN.pdf> accessed May 9, 2022.

21 EasyRead Version of International Principles and Guidelines on access to justice for persons with disabilities. 'Making sure people with disabilities get justice', Section 6 'What the words mean.'

22 European Union's Victims' Rights Directive (Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012) Article 2 Definitions <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>, accessed 7 June, 2022.

1. Introduction

In the early months of the Voices for Justice project, a national partner described the experiences of victims with disabilities in the criminal justice system as a 'blank space'. As a project consortium we agreed that the term expresses something profound about the invisibility of victims with disabilities in Europe's criminal justice systems. Despite being disproportionately at risk of serious violence and abuse[23], people with disabilities are simply missing in the only system that citizens have to hear their story and provide a remedy for the crimes committed against them. The fact that partners encountered difficulties in finding interviewees with disabilities who had any experience of the criminal justice process, and that interviews with seasoned practitioners revealed that they had only encountered a handful of victims with disabilities over decades of working in the system is a symptom of this invisibility.

Victims with disabilities are routinely denied access to criminal justice in Europe. What is needed is a complete reorientation of Europe's criminal and civil complaint, investigation and adjudication frameworks, systems, institutions and culture for the benefit of all victims of crime. The scale of this challenge and necessary transformation, is a constant theme in the *Humanising Justice* report.

This report uses the landmark United National International Principles and Guidelines on Access to Justice for Persons with Disabilities[24] as the basis for a normative assessment of the strengths and gaps in the European Unions' Victims' Rights Directive's[25] access to justice provisions. Drawing on evidence from national reports we show how gaps in the Directive are manifested in national legal frameworks, policies and practices. UN standards set clear obligations and explain, in detail, the practical steps that can secure access to justice for people with disabilities. However, the EU Victims' Rights Directive does not give them full life. Its key provisions help ensure that reporting, investigation and criminal proceedings are victim-focused, and recognise victims' rights to information and communication, but the overall framework must be strengthened in specific ways to meet international access to justice obligations.

Victims with disabilities face particular barriers in already flawed criminal justice systems that tend to marginalise the role of all victims in Europe. Important conversations that imagine a criminal justice system, based on the principles of human rights and human dignity and shaped by existing EU obligations regarding victims' right to an effective remedy and right to an effective investigation are ongoing. People with disabilities must be involved in these current debates and innovations.

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23 World Health Organisation and World Bank, World Report on Disability (2011), cited in Fiala-Butora (2013: 233); The Fundamental Rights Agency Victimisation Survey 2020.

24 United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities <https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/10/Access-to-Justice-EN.pdf> accessed May 9, 2022.

25 European Union's Victims' Rights Directive (Directive 2012/29/EU) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029> accessed May 9, 2022.

We come to a number of conclusions. The Directive should be amended to explicitly guarantee the right to legal capacity and to ensure that victims' rights with regard to support and access to information and communication are assessed and met while guaranteeing the right to reasonable and procedural accommodations. There is a need for an EU strategy on victims with disabilities that articulates a vision for and framework of equality in justice for people with disabilities, to be replicated at the national level. Guidance and training frameworks for Member States must be developed in partnership with people with disabilities and based on UN access to justice standards and guidelines. The inspirational practice on the ground by talented individuals who seek innovative and creative ways to support victims with disabilities to access their participation rights must be effectively nurtured and supported. All Member States must fully implement the Directive, taking account of the recommendations for revision set out in this report. In so doing, an effective data collection framework that allows an understanding of victims' experiences of crimes, the gaps in their access to justice and a prioritisation of action must be implemented.

A framework for 'Humanising Justice'

This section begins by exploring the nature and boundaries of the 'blank space' in which victims with disabilities are made invisible. It then moves on to introduce proposals for a model of criminal justice that is based on the meaningful recognition of victims' already established rights to an effective investigation and remedy. Finally, the importance and consequence of involving people with disabilities in the surrounding debate and promise of a model of justice that is grounded in human rights and human dignity is highlighted.

The 'blank space' is kept in place by discriminatory legal frameworks, entrenched professional cultures and practices, structural discrimination and social stigma. Serious human rights violations such as the use of chemical and physical restraints are not recognised at all in national legislation even though they can amount to torture and ill-treatment: practices that are prohibited under the European Convention on Human Rights, with no limitation or derogation.[26, 27] Serious offences such as grievous bodily harm and sexual assaults are not properly investigated and prosecuted as crimes even when they actually are criminal offences in national criminal codes. 'Disability' is missing along other categories, such as 'race' or 'gender' as a protected ground in the duty not to discriminate in national Criminal Procedure Codes.[28] Social workers and support services for people with disabilities do not have working relationships with police counterparts and are not trained in the basics of safeguarding evidence in the event of a criminal investigation.[29] It is common practice to appoint a guardian to 'represent' – and in effect, replace – victims as a

26 See Fiala-Butora (2013).

27 These practices are further detailed in paragraph h 'Responding to grave, systemic or large-scale violations', under Principle 8 of the UN Access to Justice Principles.

28 See discussion under Principle 1.

29 See discussion under Principle 10.

participant in the criminal justice process thus obliterating their right to legal capacity and silencing their voice.[30]

When trying to make sense of people with disabilities' lack of access to rights to information and communication as guaranteed by the Victims Rights Directive and national law, it is essential to understand the ugly root of the systemic and systematic discrediting of the perspective, voice and credibility of people with disabilities. As explained by Fiala-Butora, 'this abuse and suffering arises from a complete disregard for the dignity of persons with disabilities. Their disability becomes justification and what would be unacceptable treatment for 'normal' people suddenly seems acceptable when it is done to persons with disabilities'.[31]

Notwithstanding the fact they face unique harms and barriers that must be specifically addressed, victims with disabilities experience many of the same issues as other victims of crime which affect their access to justice, safety and support. Evidence from the Fundamental Rights Agency shows that all victims are caught in an imperfect system that risks widespread secondary victimisation and is in need of fundamental transformation.[32] There are vital conversations being led by advocates of an approach to criminal justice for all victims of crime that is grounded in human rights and human dignity. It is important to set out these arguments to foreground what an inclusive approach to access to justice could look like and to show how people with disabilities must and could be part of this advocacy, both influencing and benefitting from its innovations.

Human rights and human dignity in criminal justice

Article 47 of the Charter of Fundamental Rights guarantees the right to an effective remedy for individual rights violations.[33] Recital 66 of the Victims Rights Directive states, 'This Directive respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union'.[34] Article 13 of the European Convention on Human Rights Right to an effective remedy, bolsters this framework, 'Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.' Dearing and Huxtable explain, in the context of victims of violent crime, that, '…the European Convention on Human Rights and the EU Charter of Fundamental Rights are part of the legal order of all EU Member States. This entails, in a

30 See discussion under Principle 1.

31 Fiala-Butora (2013) p. 220.

32 See FRA, 2019a.

33 Article 47, Charter of Fundamental Rights: 'Right to an effective remedy and to a fair trial. Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article….Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.'

34 EU Victims' Rights Directive Recital 66 <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421925131614&uri=CELEX:32012L0029>, accessed June 7, 2022.

situation where an individual can arguably claim that their rights are infringed by a violent offence, the victim's rights under Articles 13 ECHR and 47 of the Charter to be granted access to the criminal justice system, including the right to perform an appropriate role in the proceedings.'[35]

The 'role' envisaged by such an approach should mean that, like the defendant, the victim would be recognised unconditionally and without any qualifications as an entitled party to the proceedings. As such, this rights-based approach directs responsible authorities to guarantee and ensure access to the right to be heard and recognised in a way that protects the victim and that recognises the violation of rights that they have experienced. A victim role that is predicated on the right to an effective remedy places the victim's voice at the centre of proceedings and thus foregrounds their right to accessible information and communication, so their story can be heard.

Various standards support access to this envisaged 'role' for victims with disabilities. Article 21 of the Charter of Fundamental Rights prohibits discrimination on the grounds of disability[36] and Article 20 guarantees the right to equal access to justice.[37] The CRPD definition of discrimination has been directly adopted and incorporated into EU law, and has been applied directly to the definition of reasonable accommodations.[38] For persons with disabilities, the right to equality under Article 5 of the UN Convention on the Rights of Persons with Disabilities 'requires that States parties take concrete specific measures to achieve de facto equality for persons with disabilities to ensure that they can in fact enjoy all human rights and fundamental freedoms.'[39] Article 14 of the ECHR does not prohibit a member State from treating groups differently in order to correct 'factual inequalities' between them; indeed in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article.[40]

In the context of access to criminal justice, for people with disabilities, the right to legal capacity, Article 12 of the CRPD, is a precondition to accessing other human rights, including their right to an effective remedy. Article 12(1) and (2) of the CRPD explains, 'States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law…States Parties shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.' Article 16 of the International

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35 Dearing and Huxtable (2020) p19. See FRA, 2019a, pp. 17–19, 25–35.

36 European Union: Council of the European Union, *Charter of Fundamental Rights of the European Union (2007/C 303/01)*, 14 December 2007, C 303/1: 'Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.'

37 UN CRPD Article 20: 'Everyone is equal before the law.'

38 See <https://curia.europa.eu/juris/document/document.jsf;jsessionid=5CA50742F8DB4E509D49968E8445AEE9?text=&docid=136161&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=812054> accessed 19 April, 2022. The direct application would also support the case for procedural accommodations within the EU.

39 Committee on the Rights of Persons with Disabilities, General comment No. 6 (2018) on equality and non-discrimination, 26 April 2018, § 17.

40 Nachova v Bulgaria (Application no. 43577/98 & 43579/98) § 160, ECHR.

Covenant on Civil and Political Rights (ICCPR) and Article 6 of the Universal Declaration of Human Rights guarantee, 'Everyone shall have the right to recognition everywhere as a person before the law'. The Convention on the Elimination of Violence Against Women (CEDAW) guarantees equal access to justice for woman and the particular barriers faced by women with disabilities have been explored by the UN Committee on the Rights of Persons with Disabilities.[41]

Although the international human rights framework provides a strong basis for victims' participation rights, Dearing and Huxtable use data from Fundamental Rights Agency surveys to show that the victim experience in Europe is still shaped by a culture that is, 'invariably based on an understanding of criminal justice enforcing the right of the state to the punishment of the offender, and fail[s] to see the criminal justice system as an institution asserting human dignity and human rights against offences.'[42] They explain, 'In spite of their manifest obligations under Article 47 of the Charter, to date no EU Member State has endorsed a human rights-based approach to conceptualising and constructing criminal justice.'[43]

This is of course particularly true for victims with disabilities. Victim and professional testimony set out in our national reports show that victims are rarely effectively informed of their participation rights, and that the support that is available is narrowly focused on their role as a witness. Further, the application of guardianship orders deny victims with disabilities their right to legal capacity, and 'credibility assessments' deny their right to testify. The result is that victims with disabilities cannot even access existing criminal justice processes, however flawed, and therefore are often left with no hope of a remedy in any form. As commented by Fiala-Butora, 'Legal mechanisms created with the non-disabled citizen in mind foster ill-treatment and protect the perpetrators instead of helping the victims'.[44]

The Directive recognises the rights-based concept to the extent that it has found expression in the Charter of Fundamental Rights, the European Convention on Human Rights and the CRPD in several ways. However, there are also fundamental gaps and inconsistencies. Recital 9 of the Directive takes a rights-based approach to criminal victimisation, evident from the way in which crime is presented as a violation of rights, 'Crime is a wrong against society as well as a violation of the individual rights of victims.' Recital 9 also recognises the importance of respect and dignity towards victims, 'Victims should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race'. However, Article 2 reflects a different perspective, 'Victim means: (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss, which was directly caused by a criminal offence; (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death'. As such, Article 2 reflects the 'traditional'

41 For further details refer to the section in this report 'The International Framework on Access to Justice'

42 Dearing and Huxtable (2020) p. 2.

43 Dearing and Huxtable (2020), p. 6.

44 Fiala-Butora (2013) p. 220.

model outlined by Dearing and Huxtable above, where, rather than being made fully accountable for a violation of the victim's rights, the perpetrator will be judged against a crime in the national criminal code, through a process led by the state. In such a system, the victim's role is often passive. They are put in the position of an examined object of the proceedings, subjected to repeated assessments which are used as evidence to 'determine' their credibility, to support the prosecutor's case and referred to in the court's final reasoning. Several interviewees, victims and professionals, described these experiences as degrading and traumatising.[45]

The Fundamental Rights Agency has concluded that the marginalisation of the role of victims of violent crimes amounts to a large-scale risk of secondary victimisation.[46] For people with disabilities, this marginalisation can take a discriminatory form through the practices of not recognising crimes as crimes, not providing an effective remedy for structural human rights violations and by systematically denying the right to legal capacity.

Dearing and Huxtable signal that focusing on improving victims rights 'in isolation' is not enough,

> *'It can be predicted that victims' participation rights, on which victims' recognition is premised, will come to life only after the hostile environment of the orthodox state-centred paradigm has given way to the friendlier habitat of a criminal justice system geared to protect a system of human rights flowing from human dignity. This requires a profound, comprehensive and broad-based reconstruction of criminal justice systems in Europe on the basis of the human rights concepts that today exist in the Convention and the Charter but still await to be elaborated in criminal justice terms.'*[47]

Our consultations with people with disabilities and those who work closely to support them agree that what is needed is a complete transformation of the culture of European criminal justice systems. Adopting principles of universal design and participation for all will practically support this process. During our expert consultation meeting, one participant explained that Article 13 of the CRPD on access to justice is the key,

> *'Article 13 should have an impact on the justice system for all. The CRPD is not only of and for people with disabilities, it is really about the humanisation of the justice system itself and making it accessible for all. 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.'*

45 Thanks to Anna Sležková for her insights on this section.

46 The Fundamental Rights Agency, 2019b, pp. 89–91, Cited in Dearing and Huxtable p.9.

47 Dearing and Huxtable (2020) p. 23.

Small but radical steps, indicated in the UN Access to Justice Principles[48], can help dismantle this power, which often rests in language, labelling and legal terminology. For example, through their work with victims, experienced lawyers and communication specialists change the language that is used in court, ensuring that judges meet victims and adjust their practice accordingly. These interactions and interventions help open up the system for everyone.

48 United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities <https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/10/Access-to-Justice-EN.pdf> accessed May 9, 2022.

2. Methodology

This international synthesis reports brings together research that took place at the national level in the seven project countries and examines the findings in the light of the rights of persons with disabilities established within an international legal framework.

The Voices for Justice project started in July 2020, and the research at the national level took place between September 2020 and the September 2021, and the exact timings varied between countries. The research was approached as an exploratory study, given how little existing information there is about the experiences of people with disabilities in the criminal justice system. The purpose of the research was to:

- Outline the national legal framework and context relevant to persons with disabilities who are victims of crime;
- Examine what policies are in place, including any guidance or other support for implementation;
- Investigate what happens in practice through the experiences of people with disabilities who are victims of crime and the experiences of the professionals and others who are in contact with them.

A common methodology was used across the project, involving desk research and field work. Desk research reviewed national legislation, policy and guidance documents, statistics, and reports by the courts, government bodies, NGOs, and others. This was followed by field work in the form of semi-structured interviews with professionals in the criminal justice system, people in contact with persons with disabilities, and with victims of crime with disabilities. The aim was to interview judges, lawyers, prosecutors, court officials, social workers, health care workers, victim support services, disability rights and self-advocacy organisations, and persons with disabilities who are victims of crime. Partner organisations received training in how to interview persons with disabilities who are victims of crime.

It should be noted that the research originally intended to carry out observations in court rooms, with lawyers and with victim and other support services. However, this was not possible because of the COVID-19 pandemic restrictions during the period when the research took place. Similarly, there were plans to hold expert consultation meetings, and these effectively took place as one to one meetings or remote interviews, compliant with pandemic protocols present in the countries.

In **Bulgaria** a total of 12 interviews took place between March and September 2021. Almost half the people interviewed were persons with disabilities who were victims of different types of crime. Another group of interviewees were judges and lawyers who are known to have a sensitivity to the topic and have experience working with persons with disabilities. Interviews also took place with victim support professionals and one investigating police officer. The interviewees were intentionally selected from different regions of the country. The research team knew most of the interviewees through personal and professional acquaintance.

In **Croatia** a total of 17 interviews took place between 1st of April and 14th of June 2021. Interviews were conducted with professionals (lawyers, police officers, specialists in educational rehabilitation, social educators, psychologists, sociologists, social workers) working in civil society organisations or institutions and the semi-structured interview method was used. VWSSC also reached out to people with disabilities to hear directly about their experiences in the criminal justice system. However, they encountered some difficulties in this aspect, and were not able to find people with disabilities who had experience in the criminal justice system and were willing to participate in the research.

In **Czechia** a total of 18 individual interviews and two group interviews (with three interviewees in each case) were carried out between 5 March and 15 June 2021. Due to the pandemic and the restrictions on travel and in-person meetings, most interviews were carried out via online means or via phone. Three interviews took place in person while two of them were interviews with victims with mental disabilities. The research team reached out officially to the Ministry of Justice, the Prosecutor General's Office, the Ministry of Interior, and the Czech Bar Association. There was some initial interest in the project from these institutions, but in the end only one interview, with a judge, took place. Similarly, the research team reached out to 39 non-profit organisations and associations, including self-advocacy groups, but again, it was very challenging to find persons with mental disabilities who had had any experience as victims of crime and were willing to share it for the purposes of the research.

In **Lithuania** 12 interviews were carried out online between 17 March and 28 April 2021. Research participants came from five different districts in Lithuania: Alytus, Kaunas, Klaipėda, Telšiai, and Vilnius. Five interviews were conducted with victims of crime with disabilities (sensory, intellectual, psychosocial, and physical disabilities), one with a family member of a young person with autism, one with a social worker, four interviews with prosecutors, and one with a pre-trial investigator. Open calls to participate in the study were announced and distributed via local NGOs and associations, the Lithuanian UNCRPD Implementation Monitoring Committee, Social Care Homes and Independent Living Homes, and social media. In addition, direct contact was established with the Prosecutor General's Office, individual judges and prosecutors, Lithuanian Women's Rights Association, which coordinates the Specialised Complex Support Centres (for victims/survivors of domestic violence), and with the Lithuanian Sign Language Translation Centre.

In **Romania** the results of the report are based on quantitative and qualitative research conducted between September 2020 and June 2021, combining theoretical research, analysis of legislation and public policies with 10 semi-structured interviews with crime specialists and victims of crime across the country, and also 90 requests for public inquiries, addressed to state institutions responsible for the protection and support of victims of crime.

In **Slovakia** a total of 13 individual interviews and 1 focus group with the representatives of a new project of contact points for victims run by the Ministry of Justice were carried out between 10th March and 5th May 2021. All the interviews and the focus group took place online except for one interview held by phone. Interviews were conducted with three persons with intellectual disabilities who were willing to share their experience as victims of crime, one woman and two men. All these persons were supported by another person

during the interview – one of them by her mother who was also her guardian and two of them by their social workers. One interview took place via phone and two interviews were held online due to the pandemic and extremely difficult travel conditions. The research team reached out to more than 60 organisations in total, including victim support services, legal professionals and associations, government bodies, self-advocacy groups among others, and received a resounding silence in response.

In **Slovenia** interviews with the stakeholders were performed between May and August 2021. Opportunistic and purposive sampling was used. Three persons with disabilities, six social workers, one legal advisor and the head of a victim support service were interviewed. The field research and desk research data were analysed simultaneously and triangulated to improve the validity and objectivity of the findings.

The difficulty in identifying individuals willing and able to take part in the research was striking across all countries. And as the project progressed, this was treated as a finding in itself. There can be no doubt that this 'silence' was exacerbated by the pandemic which meant many organisations and individuals were in lockdown or were experiencing competing priorities related to the pandemic and its impacts. It was nevertheless clear that there is a systemic lack of recognition of persons with disabilities as victims of crime in the justice system – what Consortium members termed a 'blank space' where victims with disabilities are all but invisible.

The international legal expert was recruited to the project at an early stage and was involved directly in the monthly project meetings and in guiding the national level research. An analytical framework was created, setting out the intersection between the Victims' Rights Directive and the CRPD. This was intended to support data gathering at the national level to ensure that information relating to all relevant victim and disability rights was collected and could be located within the international legal system. The framework proved invaluable for some partners and helped contribute to new analytical insights. For other partners, the framework was harder to use in practice, and did not help with the analysis of the data collected.

The international analysis took place as an iterative process in parallel with the writing up of the national findings reports. In addition, an expert reviewer for the international report was appointed and contributed to drafts of the report from an early stage. Two consultation events were organised to obtain input on a first draft of the report from a wider range of experts including experts in victim support services, disability rights, access to justice, restorative justice.

A challenge of the project was its breadth. It was difficult at times to collect and review data through the whole criminal justice process, for a range of crimes, and a wide variety of support needs. On the one hand, this meant that project and the research was able to draw on and engage with a wide variety of professionals and persons with disabilities; on the other hand, it meant that at times there were unanswered questions about the more detailed experiences and practices.

Impacts of Covid

While the pandemic affected the project and the research process, the more important impact was, and continues to be, on the lives of persons with disabilities. In too many cases, people with disabilities were forgotten or treated in a such a way that their health was at greater risk from the pandemic as well as being subject to abuse, isolation and segregation.

In October 2020, the COVID-19 Disability Rights Monitor published its final report, which uncovered the 'catastrophic failure to protect the lives, health and rights of persons with disabilities during the COVID-19 pandemic'. The European Union published its first strategy on victims' rights – EU Strategy on Victims' Rights (2020-2025) – noting that,

> *'The lockdown of society during the COVID-19 pandemic saw a rise in domestic violence, child sexual abuse, cybercrime, and racist and xenophobic hate crime.'*[49]

Similarly, a 2020 report[50] by Women Enabled International, into the experiences of women and girls with disabilities during the first wave of the pandemic in 2020, found that COVID-19 amplified the abuses to which they are vulnerable, both in institutions and in domestic settings.

Voices for Justice national research reports found comparable patterns to the impact of the COVID-19 pandemic in terms of increased violence and isolation and reduced safety. Some insights into the particular impact on justice systems and their implications for people with disabilities' access to justice rights were also shared.

National reports explain that the pandemic and the need to protect people was used as an excuse to isolate people completely from the outside world within institutions, even during periods of low case rates, as reported in Bulgaria,

> *Such overprotection and restrictions not only create an environment of increased risk of violence but are a form of abuse themselves. (Bulgaria, 2022, p.16)*

At the same time, in many places community services and activities were withdrawn and essential health services such as rehabilitation were suspended as the 'everyday health needs of persons with disabilities were side-lined' (Croatia, 2022, p.14).

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49 EU Strategy on Victims' Rights, 2020-2025, p.1 < https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421925131614&uri=CELEX:32012L0029>, accessed 7 June, 2022.

50 Women Enabled International, 2020. 'COVID-19 at the Intersection of Gender and Disability: Findings of a Global Human Rights Survey, March to April 2020' <https://womenenabled.org/wp-content/uploads/Women%20Enabled%20International%20COVID-19%20at%20the%20Intersection%20of%20Gender%20and%20Disability%20May%202020%20Final.pdf> accessed 31 May, 2022.

As quoted in the Czechia report (2022),

> *'Many people were prevented not only from leaving the facility or to receive a visit in their 'home' but were restricted in moving within the facility as well, their activities normally carried out in the residential service were cancelled. Even the activities of people living in ordinary apartments were curtailed in some ways by the government, and their customs and rights were interfered with, but the lives of people in residential facilities were curtailed even beyond normal measures, plus they were patrolled above the ordinary by the very institution in which they live to comply with these stricter measures.' Honza Kostečka, COVID and residential facilities – double exclusion. (Czechia, 2022, p.15)*

In Bulgaria these isolation measures hindered the already limited ability to report abuse and further limited access to victim support. Czechia reported that although victim support services tried to 'expand other forms of counselling, including helplines, videocalls via Skype or other platforms, chat, or e-mail. Unfortunately, these means of communication may not be always accessible for persons with disabilities who may not have easy access to the internet or to phone, especially (but not only) if living in a residential facility.' (2022, p.16)

Czechia noted limited advocacy on behalf of people with disabilities,

> *'The Government's Board for Persons with Disabilities remained passive in this regard and did not adopt any specific document commenting on the situation of persons with disabilities during the state of emergency.' (Czechia, 2022, p.17)*

In contrast, in Slovakia (2022),

> *'The Commissioner for the Persons with Disabilities together with non-governmental organisations issued several recommendations trying to mitigate as much as possible the negative impact of the restrictive measures on the rights of persons with disabilities in institutions, including recommendations to support as much as possible the contact of these persons with the outside world via online tools.' (Slovakia, 2022, p.16)*

Overall, as revealed by the COVID-19 Disability Rights Monitor Coordinating Group, the pandemic exacerbated the structural harm and isolation already disproportionately affecting people with disabilities.

> *'In my world, it goes like this: the COVID-19 situation shows us two things. The first - how very dangerous large-scale institutions, where we involuntarily concentrate many of the most vulnerable groups - senior and people with disabilities, are. These people were the first to be isolated and closed without the possibility of visitors, we had to put a crisis regime in place, no new clients are admitted (except in urgent situations) and the whole system of institutional care of this*

> *type is heading for collapse in this situation, not to mention the huge risk of increasing violations of fundamental human rights of people in large-scale facilities. The second – in the ordinary community, it has shown how self-help and support for vulnerable groups works, but also overall self-help in the community. (…).' (Slovakia: Miroslav Cangár, Social Work Advisory Board, citing his status report on social networks of 17 March 2021)*

All countries reported a general shutdown of the criminal courts from March 2020 with a re-opening during later waves virtually, as well as a mix of in-person and online hearings. National reports explain that there have been delays and limitations to the types of cases or procedural stages that could be heard, which didn't usually include trials (see e.g. Slovakia), as well as specific technical difficulties in operating virtual courts that can have a negative impact on access to justice rights. For example, courts only have one camera and one microphone (Bulgaria).

The Croatia report explained that remote hearings create a greater risk for intimidation and/or influencing the testimony of victims and ensuring their safety and/or the required emotional or psychological support is much more problematic than in the case of 'in-person' hearings.(2022, p.16) Czechia reported that virtual hearings separated the participant from his/her attorney and often involved difficulties of access to online communication for some persons, which 'were not systematically dealt with'.(2022, p.18)

If done correctly, online spaces can alleviate participation barriers as there is no need to attend inaccessible courtrooms and there are increased opportunities for technology-assisted communication. As explained in the Bulgaria report, 'This is an occasion to think more of integrating the technologies and build on the currents practices as a way of supporting persons with disabilities in accessing the justice system, like for example, remote access to court files, using special technologies to overcome communication difficulties, etc.' (2022, p.16) However, in reality, there is no sign that this potential for increasing universal access has been realised. As summarised in the Bulgaria report, 'In conclusion, this very complicated pandemic situation opened the door to new possibilities but at the same time exposed the persons with disabilities to new forms of exclusion and abuse.'(2022, p.16).

3. The International Framework on Access to Justice

This report assesses the EU Victims' Rights Directive's[51] provisions against the access to justice standards set by the Convention on the Right of Person with Disabilities (CRPD), drawing on evidence from Voices for Justice national reports.[52] It is hoped that our detailed analysis will add to and enhance existing work to reveal gaps, progress and opportunities in the Directive's implementation and point to workable recommendations. We show that while the Directive puts in place the key obligations to help ensure that reporting, investigation and criminal proceedings are victim-focused, and recognise rights to information and communication, the overall framework must be strengthened in specific ways to meet CRPD Article 13 access to justice obligations. We conclude that the Directive should be amended to impose an obligation to ensure the right to support, access (to information and communication), and to effectively assess and meet the need for any necessary procedural accommodations, and protection, in line with the UN Convention on the Rights of Persons with Disabilities and according to UN guidance. This would benefit all victims, ensure that the Directive is compliant with the CRPD and increase the chance that the rights of victims with disabilities are upheld in Europe.

The focus of this report is not to review the implementation of the Directive as a whole; this is an ongoing process rightly led by the Commission with scrutiny from major victim support organisations such as Victim Support Europe.[53] However, this summary from Genova and Krasteva (Bulgaria) perhaps best expresses frequently voiced frustration with national implementation for all victims,

> *'Regardless of the formal process of alignment of legislation with the EU standards, practice has not been significantly affected: legal proceedings are still lengthy; training for the relevant professionals is poor; there is no individual assessment to identify the protection needs of the victims [and there is] no special attention for specific groups of victims (children and those with disabilities). Therefore, it still is a challenge to ensure maximum safeguards and the protection of victims within the criminal justice system.' (Bulgaria, 2022, p.19)*

51 European Union's Victims' Rights Directive (Directive 2012/29/EU) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029> accessed May 9, 2022.

52 Bulgaria, Croatia, Czechia, Lithuania, Romania, Slovakia, Slovenia.

53 European Commission: Report from the Commission to European Parliament and the Council on the implementation of 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/PDF/?uri=CELEX:52020DC0188&from=EN> accessed 7 June, 2022.

The Victims' Rights Directive, the Convention and access to justice for people with disabilities

This section introduces the European Unions' Victims' Rights Directive (VRD/the Directive) and the Convention on the Rights of Persons with Disabilities (CRPD/the Convention) and starts to frame the core analysis of this report: how the Directive considers people with disabilities as victims of crime and their rights to access to justice under the Convention and other key international norms. It then introduces the European policy context and summarises the transposition of the Directive and ratification of the Convention in the seven countries that participated in this research. The section concludes with a review of disability rights' visibility in national criminal procedural law and policy. The following section uses the UN Access to Justice Principles and Guidelines, as a powerful analytical framework to uncover and understand the Directive's gaps and strengths and as a basis for recommendations regarding how it could and should be strengthened.

The Victims' Rights Directive

The European Union's Victims' Rights Directive – *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 (the 'Directive')* – was published in the Official Journal of the European Union on 14 November 2012. According to Article 27, Member States must bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 16 November 2015. Article 1 explains, 'The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings'.[54] Overall the Directive aims to shift Member States' institutional focus and practice towards meeting victims' needs, 'to be recognised and treated with respect and dignity; to be protected and supported; to have access to justice; and to obtain compensation and restoration.'[55]

The Directive articulates and provides a framework of obligations to give effect to victims' rights: to information, support, and protection; to understand and to be heard; to be informed; and to legal representation. It obliges Member States to implement an infrastructure of support, training and data collection. Overall, the Directive promises a strong substantive framework for victims of crime, based on victim-focused principles. Before we consider the provisions of the Directive that are most relevant for victims with disabilities' access to justice, the Convention on the Rights of Persons with Disabilities' access to justice framework is introduced.

54 European Union's Victims' Rights Directive (Directive 2012/29/EU), Art.1, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029> accessed June 8, 2022.

55 Ibid, p.4.

The Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities (CRPD/the Convention) and its Optional Protocol entered into force on 3 May 2008. While the Convention does not create new rights, it confirms and clarifies existing human rights obligations for people with disabilities. Further, the individual rights and obligations of States Parties must be read in light of the rights to equality and non-discrimination, set out under Article 5 of the CRPD. Importantly, the Convention fully adopts the social model of disability, which understands disability as a social construct where it is society that is responsible for the creation–and removal–of the physical, social, institutional and attitudinal barriers that are part of people with disabilities' daily reality. Article 1 of the CRPD explains, 'The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.'[56]

Several specific provisions are key to people with disabilities as victims of crime and their rights regarding access to justice. Article 15 obligates States to "take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment."[57] Article 16 requires States to take all appropriate measures to protect persons with disabilities from all forms of exploitation, violence and abuse, including by providing information on how to avoid, recognise and report instances of exploitation, violence and abuse.[58]

Article 12 of the UN CRPD on Equal recognition before the law paragraphs (1)-(3) calls upon States to:

> 1. …reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law;
>
> 2. …recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life;
>
> 3. …take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity. [59]

Article 13 of the UN CRPD calls upon States to ensure effective access to justice for persons with disabilities on an equal basis with others, including through the:

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56 UN General Assembly, Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106, Art. 1, available at: <https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_61_106.pdf>, accessed on June 9, 2022

57 Ibid, Article 15.

58 Ibid, Article 16.

59 Ibid, Article 12.

'…provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.'[60]

Under Article 12(3) (UN CRPD) national authorities must, 'create an actionable and enforceable right to receive the individually determined procedural accommodations, including support, necessary to enable persons with disabilities to participate effectively in all proceedings in any court, tribunal or forum'.[61] As explained by the CRPD Committee 'there is no limit on the obligation under article 12 (3). The fact that support to exercise capacity may impose a disproportionate or undue burden does not limit the requirement to provide it.'[62]

The Directive, disability and access to justice

Recital 15 of the Directive contains the most specific provision on disability: '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'.[63] Recital 9 identifies disability as a non-discriminatory ground 'to be taken into account' by all competent authorities.[64] The importance for States to 'consider' the needs of people with disabilities is acknowledged in several Directive articles and recitals. Commission Guidance explains that Member States, 'should pay particular attention to the principle of non-discrimination', highlighting the grounds of sexual orientation, gender identity and gender-based violence[65]. However, disability isn't mentioned. The EU Strategy on Victims' Rights lists victims with disabilities, along with several other groups as those for whom it is 'particularly challenging to go through criminal proceedings and to deal with the aftermath of crime'. [66]

Several of the Directive's provisions are particularly key for access to justice rights. Article 3 of the Directive, Right to understand and be understood, Article 7, Right to interpretation

60 Ibid, Article 13.

61 United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 1, para 1.2.i., available at: <https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/10/Access-to-Justice-EN.pdf> accessed May 9, 2022.

62 Committee on the Rights of Persons with Disabilities: General comment No. 6 on equality and non-discrimination (CRPD/C/GC/6) 9 March 2018, par. 48. available at: <https://digitallibrary.un.org/record/1626976> accessed 24 May, 2022.

63 EU Victims' Rights Directive, Recital 15, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421925131614&uri=CELEX:32012L0029>, accessed June 9, 2022.

64 Ibid, Recital 9.

65 DG Justice Guidance document related to the transposition and implementation of the Directive 2012/29/EU, p. 12. available at: https://ec.europa.eu/info/sites/default/files/13_12_19_3763804_guidance_victims_rights_directive_eu_en.pdf, accessed June 9, 2022.

66 European Commission: EU Disability Strategy 2021-2030.

and translation and Article 10, Right to be heard are fundamental to ensuring effective communication for people with disabilities. Articles 4 and 6 regarding the right to receive information from first contact and throughout proceedings, are important for ensuring access to information. Articles 8 and 9 regarding access to support services and Article 13, the right to legal aid are central to access to justice and safety. Articles 18 to 24 set out victims' protection rights during investigation and all criminal proceedings. A22 directs MS to pay 'particular attention to…victims with disabilities' when conducting individual needs assessments. Recital 56 directs MS to take account of the 'personal characteristics' of the victim, including 'disability' and Recital 57 directs MS to take particular care when assessing the need special protection measures for victims with disabilities because they are among the specific groups of victims that 'tend to experience a high rate of secondary and repeat victimisation'. Article 25 and 28 set out the training and data collection mechanisms that need to be in place to support implementation. Equal access to these rights for people with disabilities depends on full recognition of legal capacity, effective participation, and on assessing and implementing appropriate procedural accommodations. However, our analysis shows that the Directive does not support these three preconditions and national evidence shows that this is also the case on the ground, which does not conform to State obligations under the CRPD.

As explained in the section on Humanising Justice, evidence from the national level shows that national criminal procedure codes allow the court to appoint a guardian ad litem or to recognise existing guardianship orders. The guardian replaces the victim as the person with whom the State must communicate about his or her procedural rights as defined in national law. Through this routine denial of legal capacity, the victim loses direct access to the rights outlined in the paragraph above. Although the EU Strategy on Victims' Rights[67] acknowledges that States' efforts need to be in line with the CRPD and that 'access to justice may be more difficult if [people with disabilities] are deprived of their legal capacity', the Directive does not mention let alone guarantee the right to legal capacity for people with disabilities.

In terms of the right to procedural accommodations, our analysis shows that the procedural accommodation assessment and implementation framework offered by the Directive focuses entirely on identifying and addressing specific protection needs (Article 22 and 23) without addressing needs for ensuring effective participation, especially relating to access to information and effective communication. Again, the Directive and related guidance do not refer to CRPD rights to procedural accommodations.

As discussed in the section on Humanising Justice, there is also a need for a deep transformation of established institutional cultures and practices that privilege the power of the State over the rights and dignity of the victim. Victims with disabilities face the added

67 European Commission: Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee of the Regions EU Strategy on Victims' Rights (2020-2025), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0258> accessed 19 May, 2022.

barrier of disablism. Evidence given by Genova and Krasteva (Bulgaria) shows a terrible example of this form of discrimination,

> *'One of the family members of a person who died in a car crash was a child with disabilities. The first instance court decided that since the child had disabilities he/she could not suffer damages (emotional) from the death of his/her parent.' (Bulgaria, 2022, p.32)*

Like all victims, and as expressed in the Directive, people with disabilities are individuals, and their access needs should be assessed and addressed individually, however, as a group, they are battling with almost insurmountable barriers leaving serious crimes against them uninvestigated, unheard by the court and unpunished. Their 'individual needs' are actually caused by a system that produces inaccessible information, communication and physical environments, and a culture of systemic secondary victimisation that privileges 'credibility' and 'competence' and dismisses people with disabilities out of hand. These contexts and systems of discrimination and States' duties to dismantle them are not sufficiently visible in the Directive or related guidance. As explained by the CRPD Committee, "To ensure equal opportunity for all persons with disabilities, the term "equal benefit of the law" is used, meaning that States parties must eliminate barriers to gaining access to all of the protections of the law and the benefits of equal access to the law and justice to assert rights.[68]

Next, the European and national policy contexts are summarised to try to determine how and whether disability is considered in victim justice policy, and vice versa.

The European and national policy contexts

The EU Strategy on Victims' Rights 2020-2025 aims to ensure that all victims of crime can rely on and exercise their rights. The document pays particular attention to Member States' efforts and responsibilities regarding ensuring effective communication with victims, a safe environment in which to report crime, and enabling the support and protection for the most vulnerable victims. The strategy acknowledges that people with disabilities can be deprived of their legal capacity, which can make their access to justice 'more difficult'.[69]

The document explains, 'it is also important that relevant professionals communicate with victims in a way that is adapted to victims' specific needs. This is particularly relevant for victims with disabilities. Professionals who are in contact with victims with disabilities should be trained to communicate with them in a way that takes into account any mental or physical impairment such as hearing or speech impairments. In addition, accessibility to

68 Committee on the Rights of Persons with Disabilities. General comment No. 6 (2018) on equality and non-discrimination. 26 April 2018. <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsnbHatvuFkZ%2Bt93Y3D%2Baa2qtJucAYDOCLUtyUf%2BrfiOZckKbzS%2BBsQ%2BHx1IyvGh6ORVZnM4LEiy7ws5V4MM8VC4khDIZJSuxotVqfulsdtPv> accessed on 19 May, 2022.

69 European Commission: EU Strategy on Victims' Rights (2020-2025) p.13.

premises for victims with disabilities must be ensured so they can report crime and participate in criminal proceedings.'[70]

In contrast to the EU Disability Strategy 2010-2020, the 2021-2030 strategy deals specifically with the issue of access to justice and legal protection. It highlights that 'persons with disabilities should have effective access to justice, including through the provision of adequate accommodations.'[71] The reality of the barriers facing people with mental disabilities is made more explicit, compared with the victims' strategy, 'Legal barriers exist in particular for persons with intellectual disabilities, psychosocial disabilities or with mental health problems as they are often restricted in or deprived of their legal capacity'. The strategy aims to eliminate 'practical and legal barriers which hinder persons with disabilities in criminal and civil proceedings'[72] especially through 'initiatives for digitalisation of justice systems, protection of victims' rights and training for professionals'[73] and taking into account CRPD requirements. Encouragingly, the strategy commits to 'launch a study on procedural safeguards for vulnerable adults in criminal proceedings, and assess the need for legislative proposals strengthening the support and protection of vulnerable adults who fall victims of crime, in line with the EU Strategy on Victims' Rights (2020-2025)'.[74]

These two key strategies provide a basis for a significant focus on identifying and addressing barriers to participation faced by victims with disabilities, and the commitment to research procedural safeguards is very welcome. However, a human rights, human dignity framing of victims' rights is missing, which undermines the transformative potential of these strategies. Further, a lack of a human rights model of disability and a focus on 'vulnerability' risks perpetuating the paradigm that personalises victims needs as opposed to understanding their environmental, attitudinal and discriminatory causes.

CRPD ratification and VRD transposition: the national picture

Although all States have ratified the CRPD, there is very limited policy and implementation guidance, suggesting low institutional commitment to protect and uphold the full recognition of human rights of people with disabilities. National legislation that transposes the Victims' Rights Directive does not specifically refer to CRPD compliant definitions of 'persons with disabilities', or prohibit disability discrimination specifically within criminal procedural law. This is a particularly important omission. While disability discrimination might be defined and monitored at the national level in relation to employment or health policy, the same approach should be taken in the criminal justice space, in which people with disability face specific risks of discrimination. In fact it is more likely that 'disability' is defined as a basis to restrict rights, such as the appointment of a guardian ad litem by the

70 Ibid., p.4.

71 European Commission: EU Disability Strategy 2021-2030, p.16.

72 Ibid.

73 Ibid., p. 16.

74 Ibid, p.17.

court, or when appointing an 'expert' to assess whether their evidence is 'credible'. These practices are discussed under Principle 1 in particular.

As set out in the table below, all the countries taking part in this research have ratified the CRPD more than a decade ago, which suggests sufficient time to consider the most effective implementation for all of its obligations, including those relating to access to justice.

CRPD

The UN CRPD was adopted on 13 December 2006 by the UN General Assembly.

Table 1. Formal ratification of UN CRPD by project countries

Country	Signature	Formal ratification
Bulgaria	17 Sep 2007	22 Mar 2012
Czechia	30 Mar 2007	28 Sep 2009
Croatia	30 Mar 2007	15 Aug 2007
Lithuania	30 Mar 2007	18 Aug 2010
Romania	26 Sep 2007	31 Jan 2011
Slovakia	26 Sep 2007	26 May 2010
Slovenia	30 Mar 2007	24 Apr 2008

The table below shows that all seven countries have also transposed the Directive. All countries have undergone infringement proceedings by the Commission, however information about their focus and findings is often opaque and inaccessible, which can hinder national advocacy efforts to accelerate effective implementation. In all countries, the Directive has been transposed using from 24 to 69 specific laws, which can hinder efforts to track implementation. Genova and Krasteva (Bulgaria) refer to comments from a 2019 report[75] that,

> *'Some of the Directive's requirements are written into legislation as general principles without the development of detailed legal tools and mechanisms for their implementation. Most of the terms and the concepts of the Directive are new for the Bulgarian criminal*

75 VOCIARE National Report on EU Victims' Rights Directive based on research conducted between June 2018 and March 2019, available in English language at <https://victim-support.eu/wp-content/files_mf/1611087108VOCIARE_National_Report_Bulgaria.pdf> accessed 29 May, 2022.

justice. Whilst transposing the directive into law, it was necessary to consider how these new ideas should be implemented in practice and how they will fit within the existing criminal legal procedures: unfortunately, this aim has not been achieved.' (Bulgaria, 2022, p.19)

EU Victims' Rights Directive

The transposition deadline of the EU Victims' Rights Directive was 16/11/2015.

Table 2: Transposition of EU Victims' Rights Directive by project countries

Country	Number of measures
Bulgaria	24
Czechia	64
Croatia	67
Lithuania	69
Romania	40
Slovakia	28
Slovenia	45

Although all countries have transposed the Directive and ratified the Convention, there is little sign that disability rights have been integrated into criminal justice and victim policy, strategy and legal instruments at the national level. For example, in contrast to other commonly protected characteristics such as 'race', gender, etc. disability discrimination is not protected in national criminal procedural codes. As explained by Genova and Krasteva (Bulgaria),

'One of the main principles of our Criminal Procedure Code is that all people should be treated equally throughout criminal proceedings. The particular provision lists various discrimination grounds like race, religion, education, etc. but it does not include "disability". And although there are other general rules regarding non-discrimination towards persons with disabilities as set forth in the Equality Act[2] and the Persons with Disabilities Act, this simple omission could be considered one reason for the lack of connection and consistency between the criminal justice and the disability related legislation and policies in Bulgaria.' (Bulgaria, 2022, p.20)

Sležková and Pastorek (Czechia) also highlight the disconnect between considerations of disability discrimination and the criminal justice context,

> *'…among which the National Plan for the Creation of Equal Opportunities for Persons with Disabilities for 2021-2025 is the most important one [national strategy regarding people with disability], fails to address the situation of persons with disabilities as victims of crime. Therefore, even though the National Plan incorporates equality before the law and access to justice in its strategic objectives and explicitly refers to Articles 12 and 13 of the CRPD, it still concentrates more on the civil and not the criminal context.…The national plan also addresses access rights, regarding the need to 'translate' all documents regarding public administration into Easy-to-read formats, however this guidance does not extend to CJ agencies.' (Czechia, 2022, p.26)*

Grigaitė and Leanaitė (Lithuania), point out that the only regulation that addresses disability relates to the appointment of statutory representatives, in violation of the right to legal capacity, guaranteed by the CRPD.[76] These findings suggest that the same lack of consideration of disability discrimination and the obligation on public authorities to uphold the right to legal capacity and participation rights found in the Directive is mirrored on the ground.

The next section considers, in detail, how and to what extent CRPD access to justice rights are protected by the Directive and by national laws and practice.

76 See Principle 1 analysis of this report.

4. Analysis at the interface of UN and EU access to justice standards for victims of crime with disabilities

This report uses the UN Access to Justice Principles to structure an analysis that foregrounds the interface between the CRPD and the Victims' Rights Directive (the Directive). The Principles are rooted in CRPD Articles 12 (Equal recognition before the law) and 13 (Access to Justice), integrate UN CRPD obligations on accessibility and non-discrimination and provide a practical and detailed basis for actionable recommendations. As such this report does not aim to replicate other expert legal, policy and academic reviews and analyses of access to justice rights.[77]

The practical examples given in the UN Access to Justice Principles provide clear guidance on how to make access to justice a reality in criminal proceedings for people with disabilities, and help illustrate how the Directive and national law and practice could be improved to meet CRPD standards. In grounding our analysis in the UN Access to Justice Principles we aim to make the most targeted and useful recommendations for our key stakeholders, including the European Commission, and EU Member States that are signatories to the UN Convention on the Rights of Persons with Disabilities. At the same time, the analysis and recommendations presented here may be helpful for the the CRPD Committee in their assessments of the EU and EU Member States' compliance with the CRPD.

This section reviews the Principles in turn and provides an analysis of the extent to which the relevant elements of the Directive are aligned with the content of each Principle. It goes on to examine the evidence from national research to further illuminate gaps in and opportunities for protection, and gives a direction for the key recommendations from this report.

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

Guideline

1.1 States shall guarantee that persons with disabilities enjoy legal capacity on an equal basis with others and, where necessary, shall provide the support and accommodations necessary to exercise legal capacity and guarantee access to justice.

This principle is one of the most important in the context of the project. Section 1.2 lists 13 duties that comprise Principle One. Overall, most of the duties are not given explicit effect by the Directive or in national legislation, policy and practice.

77 See for example, Flynn, Eilionóir, and others, Final Report: Access to Justice of Persons with Disabilities. Galway: Centre for Disability Law and Policy, National University of Ireland, Galway, 2019.

This Principle concerns the elements of Article 12 and 13 that make them, as identified by the Committee,

> *'…"threshold rights", that is, it is required for the enjoyment of almost all other rights in the Convention, including the right to equality and non-discrimination. Articles 5 and 12 CRPD are fundamentally connected, because equality before the law must include the enjoyment of legal capacity by all persons with disabilities on an equal basis with others. Discrimination through denial of legal capacity may be present in different ways, including status-based, functional and outcome-based systems. Denial of decision-making on the basis of disability through any of these systems is discriminatory.'*[78]

The CRPD Committee has specifically emphasised these rights in relation to people with intellectual disabilities and psychosocial disabilities,[79] and confirmed that these individuals must be able to exercise their roles in any type of proceedings, including as victims, defendants, and witnesses.[80] Procedural accommodations must be effectively available at all stages of the investigation and judicial proceedings.[81,82]

'Legal capacity' is 'the capacity to hold a right and the capacity to act and exercise the right, including legal capacity to sue, based on such rights'.[83] Series and Nilsson explain (2019), 'Legal capacity is distinct from mental capacity. Mental capacity concerns an individual's putative psychological abilities, whereas legal capacity refers to whether a person's acts and decisions are treated as legally effective within a particular legal system…In jurisdictions that take a functional approach to establishing legal capacity, the risk is that mental capacity and legal capacity are conflated'. The CRPD committee has expressed concern that these approaches mean that, 'a person's disability and/or decision-making skills are taken as legitimate grounds for denying his or her legal capacity', they argue that such approaches constitute a 'discriminatory denial of legal capacity' and are incompatible with article 12(2) CRPD. Our national analysis shows that these discriminatory legal frameworks and practices are routine in the countries that took part in the Voices for Justice project.

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78 Committee on the Rights of Persons with Disabilities: General comment No. 6 on equality and non-discrimination (CRPD/C/GC/6), 9 March 2018, paragraph 47., available at, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsnbHatvuFkZ%2Bt93Y3D%2Baa2qtJucAYDOCLUtyUf%2BrfiOZckKbzS%2BBsQ%2BHx1IyvGh6ORVZnM4LEiy7ws5V4MM8VC4khDIZJSuxotVqfulsdtPv> accessed 18 April, 2022.

79 CRPD Committee, Concluding Observations: Slovenia, UN Doc CRPD/C/SVN/CO/1 (5 March 2018) § 21; CRPD Committee, Concluding Observations: Sudan, UN Doc CRPD/C/SDN/CO/1 (2 March 2018) § 26; CRPD Committee, Concluding Observations: Morocco, UN Doc CRPD/C/MAR/CO/1 (25 September 2017) § 29.

80 CRPD Committee, Concluding Observations: Iran, UN Doc CRPD/C/IRN/CO/1 (10 May 2017) § 29(a).

81 CRPD Committee, Concluding Observations: Ethiopia, UN Doc CRPD/C/ETH/CO/1 (4 November 2016) § 30.

82 Fiala-Butora, unpublished.

83 Santos Cifuentes and others, 'Legal Opinion on Article 12 of the CRPD' (University of Leeds Disability Studies Group Archives, 2008) <http://www.leeds.ac.uk/disability-studies/archiveuk/legal%20opinion/LegalOpinion_Art12_FINAL.pdf> accessed 18 April, 2022.

National standards and processes that safeguard people with disabilities' right to legal capacity are preconditions for their access to justice rights under Article 13, CRPD. If people with disabilities are denied their right to legal capacity, they will not have the legal status to report a crime, to give a statement, to instruct a lawyer, to challenge decisions, to give evidence, or to consent to a restorative justice process. If victims with disabilities are routinely denied the right to legal capacity the 'system' will never understand or effectively meet the need to produce accessible information about victims' rights or put in place meaningful communication support. This denial takes place in a context where people with disabilities are more at risk of exploitation, violence and abuse, much of which entails criminal offences. Article 16 CRPD explicitly guarantees the right of people with disabilities to be free from these harms. As explained by Keeling (2019), 'Where abuse does occur, criminal sanction may not be sought for any number of reasons, frequently due to a perception that evidence is unreliable. Rather than criminal sanctions, civil protective measures, frequently through social care will be put in place.' [84] Systems that fail to protect the right to legal capacity collude with offenders who target victims they know will not be believed, protected or taken seriously.

The guidelines for this principle detail the specific legal protections that States should have in place to ensure that people with disabilities are considered to have, act on and exercise legal capacity in relation to the proceedings of all courts, without discrimination.

Evidence suggests that victims with disabilities' legal capacity is not only routinely denied in the seven countries researched in this project, it is rarely acknowledged as a fact or a right. The routine application of guardianship orders undermine and remove opportunities for people with disabilities to participate in criminal proceedings, through, for example, supported decision-making. Biased and prejudiced assumptions about people's 'credibility' mean that the right to testify is simply by-passed. It is this systematic exclusion which fundamentally shapes the 'blank space' described early in this report, in which people with disabilities do not appear in the roles of 'complainant' or 'victim' in Europe's justice systems. Further, our analysis suggests that the Directive's provisions and related Commission Guidance do not sufficiently acknowledge or counter these rights violations.

Principle 1: Directive and CRPD comparative analysis

Overall the Directive does not give full effect to rights under Article 12 and 13 as set out in Principle One. As mentioned above, discrimination on the grounds of disability is prohibited however, the CRPD is not referred to as guidance on how this should be realised at the national level, for example by ensuring that victims with disabilities have an actionable and enforceable right to receive individually determined procedural accommodations, including

84 Amanda Keeling, 'Artilce 16 Freedom from Exploitation, Violence, and Abuse' from ' The UN Convention on the Rights of Persons with Disabilities: A Commentary,' ed. Ilias Bantekas, Michael Ashley Stein, Dimitris Anastasiou, p. 468.

intermediaries.[85] The right to legal capacity is not guaranteed or mentioned in the Directive. 'Emotional' and 'intellectual' capacity are referred to in the Recitals as factors to be 'taken into account' when deciding, for example, to involve a victim in restorative justice, and when ensuring that a victim can be understood in proceedings. Referring to capacity in this way, without prefacing States' obligations to guarantee legal capacity on an equal basis with others could allow an interpretation that 'lack' of capacity can be grounds to curtail or reduce victims with disabilities' participation in criminal justice proceedings. Further, failing to emphasise the importance of the human rights model over the medical model of disability is 'especially problematic' when, as pointed out by Genova and Krasteva (Bulgaria), 'a change in the behaviour of the victim with disability, which might well be their reaction to the crime they experienced, is attributed to their disability/diagnos[is] and in many cases, is treated medically. (2022, p.39).

Principle 1: National implementation and gaps

National reports show that Member States do not guarantee legal capacity or provide required support and accommodations in several important ways. Two major and pervasive practices that violate the right to legal capacity are common. First, police and judicial authorities routinely recognising an appointed guardian as a 'replacement' for the victim with regard to their participation rights. Second, official 'credibility' assessments that rely on police officers' impressions and/or medical opinion to determine whether victims' evidence and testimony are admissible, thus interfering with victims' rights as an active participant in proceedings, i.e. as a witness. Although these laws, policies and actions are in direct violation of CRPD rights, this is not understood by governments, courts and individual professionals to be the case. On the contrary, state laws sanction the practice of recognising or appointing a guardian as an acceptable way to fulfil Directive information and communication obligations. Kapus et al (Slovenia) explain,

> *'The main issue is that the state considers guardians to be a form of support, although they are appointed as substitute decision makers for persons with disabilities in various areas of life, which contradicts the main principles [and] rights provided by the CRPD'. (Slovenia, 2022, p.190)*

What are guardianship laws/ provisions?

Guardianship laws/ provisions are where the national criminal procedure code allows the court to appoint a guardian ad litem or to recognise an existing guardianship order for the purposes of exercising key participation rights on behalf of the victim. The guardian replaces the victim as the person with whom the state must communicate about his or her

85 Intermediaries are communication specialists who assist children and adults who have communication difficulties in the justice system. See the following link for a description, <https://www.intermediaries-for-justice.org/sites/default/files/all_about_intermediaries.pdf> accessed 19 May, 2022. Please note, there is some international variability on the definition of 'intermediaries' and on the exact role.

procedural rights as defined in national law. When under this order a victim with disabilities cannot engage a lawyer and is not directly informed by the responsible authorities about their right to compensation, the progress of their case or other related rights under the Directive and relevant national law. They do not have the right to direct access to information and communication about the progress of their case or any decisions made by the police or prosecutor, such as discontinuing criminal proceedings. They also can't challenge any of these decisions, in accordance with national law. The guardian will not necessarily be legally qualified, may not understand the process, may not make the necessary applications to receive information about the progress of the case, or to appoint legal representation within legally prescribed timescales, or at all.

Furthermore, where a guardian is already in place, the guardian might also be compromised – for example, by having an existing relationship with the accused. Sometimes there is a direct conflict of interest with the guardian e.g. where they are the director of the institution where violence has taken place and are implicated through lack of supervision or even direct involvement. The guardian might not be motivated to spend any time to support and inform the victim. These problems can combine to preclude access to information and communication and have the effect of silencing people with disabilities in the criminal justice space.

People with disabilities must have their full legal capacity recognised at all stages of the proceedings, from reporting to post-judicial phases. At no point should information go to or be sought from a guardian instead of the victim. Instead, the victim must have whatever support is necessary for them to participate as fully as they wish. These rights can be derived from both the CRPD rights (Articles 12 and 13) and the VRD participation rights.

Analysis of guardianship and credibility assessment practices

All countries allow and, in some circumstances, direct the appointment of a guardian ad litem. Interviews with professionals reveal discomfort with the practice,

> *'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 the 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, (Bulgaria, 2022, p.29)*

Sležková and Pastorek (Slovakia) highlight the structural barriers created by the recognition of guardianship orders,

> *'The Criminal Procedure Code knows practically only one mechanism for persons with mental disabilities who need support from another person to exercise their procedural rights practically and effectively – guardianship. Based on principles of substitute decision making, this mechanism is in violation of the rights of persons with disabilities to equal recognition before the law under Article 12 of the CRPD and access to justice under Article 13 of the CRPD. The system relies on the victim being represented by another person who is not bound by the victim's instruction and the victim's will. Furthermore, this person is usually not a legal specialist, very often guardians may be the victim's relatives, other close persons, or social workers, even from the facility where the person lives.[118] They may not be competent to adequately represent the person in the reporting stage and eventually complain against the Police's decision not to initiate the criminal proceedings.' (Slovakia, 2022, p.29)*

Further, guardians may not only prevent the victim from participating in the proceedings, but be the direct source of victimisation, for example placing them in an institution against his/her will or selling their property.

The practice of 'credibility assessments' is similarly blatant and systemic. According to Sležková and Pastorek (Czechia) the process involves an ''expert assessment' of 'general' (or his/her personality generally) and specific credibility (or his/her testimony)'. The assessment results are available to the defendant. It is important to note that judgments of the Supreme Court and the Constitutional Court have established that the expert examination is only one source of evidence to be considered when assessing credibility. It would be important that these sorts of legal rules are incorporated into guidance and guidelines for police and criminal justice practitioners in ways that meaningfully challenge blanket assessments of credibility and support access to justice rights.

Grigaitė and Leanaitė's (Lithuania) analysis found that there were differing views about victim credibility issues across law enforcement,

> *'the interviewed law-enforcement officers expressed quite different positions as to participation of victims with psychosocial and/or intellectual disabilities (especially those deemed legally 'incapacitated' by the court) in the proceedings and their possibility to testify. Some officers noted that such persons cannot be officially questioned,..... while others stated that they can be questioned as regular victims (except they would not be warned about the criminal responsibility for false testimony), however, the reliability of their testimony would be questioned.' (Lithuania, 2022, p.31)*

Genova and Krasteva (Bulgaria) explain the total exclusion from access to justice rights that can result from a medical assessment, or even an informal police assessment of credibility,

> *'Once the [medical expert] confirms that the victim could not be a credible witness, this person is no longer addressed as a source of evidence in any stage of the criminal proceedings but,... more*

> *importantly, somehow along with that, the person is automatically excluded from personally taking part in all criminal proceedings not just as a witness but also as a victim. At the same time, no mechanism is envisaged to allow the victim to appeal such exclusion. Our research reveals that sometimes victims with disabilities are being excluded without even an expert opinion but with the simple suggestion by a policeman from the investigation that the person looks unreliable.' (Bulgaria, 2022, p.31)*

Sležková and Pastorek (Slovakia) come to similar conclusions,

> *'Victims with disabilities' credibility is immediately under threat… access to special protection measures for victims with mental disabilities may be seriously impeded by the prevailing medical approach to disability. Victims with mental disabilities are regularly subjected to expert examination of their credibility even before they are interrogated as witnesses. The findings of the examination may prevent the victim from even being heard as a witness.' (Slovakia, 2022, p.41)*

This practice is questioned by those within the system as expressed by this Bulgarian district judge according to Genova and Krasteva (Bulgaria),

> *'but he reacts adequately…he can make a conversation and it corresponds to the actual situation…I am saying this because there was an opinion that he would not be interrogated because of his illness, that he could not give credible testimony for what happened. This was a priori concluded by one of the doctors from the hospital who was interviewed as a witness…Q: There was not even an expertise you say? A: Yes., Q: Only an opinion? A: Yes…He (the victim with disability) was excluded as a source of information.' (Bulgaria, 2022, p.31)*

Procedural accommodations during the credibility assessment itself, such as accompanying a victim, or putting in place communication support are not available. As explained by an interviewee to Sležková and Pastorek (Slovakia),

> *'We do not accompany victims to expert examination, that's what they do to themselves. There's no need, there she just circles in the form and writes. Although I think it would be good if I just sat there, too. Of course, I can't tell her, "circle this". But I would just sit there. Once an expert requested a psychological report from me and I came in and I saw the victim's eyes, those eyes I'll never forget. Completely terrified expression. I could see she needed help. At the time, I didn't dare ask the expert to allow me to stay, but I could see the victim was completely terrified. All these issues, again and again. I understood her.' A social worker of a shelter facility for women. (Slovakia, 2022, p.31)*

In some cases, the discrimination is devastatingly blatant. Sležková and Pastorek (Slovakia) present a case study of a woman with an intellectual disability who was a victim of crime, who was subject to a medical, functional 'assessment' of 'credibility',

> *The expert concluded that:*
>
> *'The general and specific credibility of the testimony of (…) [Ms. X] for mental retardation, emotional lability, and behavioural disorders is not fulfilled, the intellect deficit of the witness is so severe that it does not even meet the basic criterion for credibility.' (Slovakia, 2022, p.44)*

Based on these findings, the police decided not to interview the victim, or any other people with mental disabilities living in the facility. Instead, the police stopped the criminal proceedings arguing that it was obvious that the criminal offence had not happened. The police referred mainly to the testimonies given by the facility's director and staff. Ms. X's mother and guardian said:

> *'The investigator asked us…a rhetorical question whether he should trust rather a person with an IQ of 50 than workers with a university degree.' (Slovakia, 2022, p.44)*

As addressed by Genova and Krasteva (2022), Bulgaria has introduced important legal changes with regard to supported decision making. The Persons with Disabilities Act 2019 stipulates 'any person with disabilities who experiences difficulties in making legally binding decisions, including in court proceedings or in any legal proceedings, is entitled to measures for supported decision making. The measures involve the intervention of social services where, according to the law, the professional making the intervention must have a relationship of trust with the person in need' (p.33). However, the researchers explain that implementation instructions have yet to be issued.

In the context of criminal justice processes where it is for the prosecution to prove an offence was committed by the accused, there is a particular burden on all victims to be able to provide a full detailed, consistent and 'credible' account of the crime. This burden is heavier for victims with disabilities who are denied their right to legal capacity and to testify. It is essential to eliminate these violations and to proactively and effectively support them to exercise their right to legal capacity, including to effectively report their experience and give their evidence.

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

Guideline

2.1 To guarantee equal access to justice and non-discrimination, States must ensure that the facilities and services used in legal systems are built, developed and provided on the basis of the principles of universal design by taking, at a minimum, the following actions:'

(a) Enacting and implementing enforceable laws, regulations, policies, guidelines and practices that guarantee the accessibility of all facilities and services used in the justice system, based on the principles of universal design, including:

(i) Courts, police facilities, prisons, detention and forensic facilities, jury facilities, administrative offices and other such places (including toilets, cells, offices, entrances, lifts, canteens and recreational spaces in those places);

(ii) Information, communications and other services, including information and communications technology and systems;

(b) Ensuring that all means of transportation used in the justice system are accessible;

(c) Ensuring that adequate financial resources are available to make the justice system physically accessible to persons with disabilities in accordance with the principles of universal design;

(d) Guaranteeing the provision of procedural accommodations when facilities and services fail to ensure access to the existing physical environment, transportation, information and communications for persons with disabilities.

> *'He explains that the area [police station] is hardly accessible for a person with disability and in such cases they carry out the interview at the parking lot.' Interview with an investigating police officer.' (Bulgaria, 2022, p.20)*

Principle 2 illuminates two important obligations. First, that information about the criminal justice system–including what victims' rights actually are – is easily and publicly accessible. Second, that the principles of universal design must be applied to ensure access for people with a range of impairments and who undertake a range of roles including as victims, witnesses, defendants, suspects, jurors, and staff. Importantly, this Principle explains the need to '[guarantee] the provision of procedural accommodations when facilities and services fail to ensure access to the existing physical environment, transportation, information and communications for persons with disabilities.' For example, in situations where premises are not accessible, 'remote hearings' should be made available, or information on the hearing or decision is not accessible in easy-read so an intermediary should be available to explain what's happening as the hearing progresses. It is important to note the requirement to ensure accessibility in Article 9 of the CRPD includes access to the

'physical environment', 'to information and communications' and to 'other facilities and services' 'on an equal basis with others'. Such obligations on States are therefore not dependent on considerations of reasonableness or disproportionate burden.

This section explores Directive provisions and national evidence in relation to efforts to make information and premises generally accessible to people with disabilities (see Principle 2, a. iii). The obligation to ensure that procedural accommodations are in place in the absence of universal access is explored in detail under Principle 3. The analysis under Principle 4 explores Directive and national provisions in place to keep victims informed during the course of investigation and criminal proceedings.

People must be able to access information about their rights in general, as well as key decisions about their particular case should they be involved in criminal proceedings. They must be able to enter the places–physical or virtual – where criminal justice processes are taking place. Guaranteeing these rights is an essential precondition of access to justice for all victims of crime. Without them, victims are made invisible and silenced.

Principle 2: Directive and CRPD comparative analysis

The Directive has one provision that is specifically relevant regarding the elements of Principle 2 that are being examined in this section. Recital (15) states, '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'.[86] However, the Directive and related guidance do not refer to the principles of universal design to explain what is meant by 'facilitating the accessibility to premises'. They also do not refer to the procedural accommodations that would need to be put in place where universal design is not implemented, which will inevitably be the case in most EU Member States. This major gap is explored in more detail in our analysis of Principles 3, 4 and 6 below. Further, the right to sign language is not referred to anywhere in the Directive. Overall, the Directive lacks a broad guarantee of accessibility to guarantee effective participation and access to justice, including accessibility of information and of communication processes.

Also relevant for this analysis is Article 4 of the EU Directive 2016/2102, which explains, 'member States shall ensure that public sector bodies take the necessary measures to make their websites and mobile applications more accessible by making them perceivable, operable, understandable and robust.'[87]

86 EU Victims' Rights Directive, Recital 15.

87 Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies, avalaible at, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L2102&from=EN> accessed 19 May, 2022.

Principle 2: National implementation and gaps

There is little evidence that the authorities in the seven countries have taken any steps regarding national laws, policies or practices to ensure the facilities and services used in legal systems are built, developed and provided on the basis of the principles of universal design, in relation to, inter alia, information, communications and other services. More specifically, national frameworks fail to distinguish between and fail to fully implement accessibility measures, such as: the modifications of buildings and installation of generally accessible reporting processes, for example through sign language, and accessible online portals; reasonable accommodations, meaning individualised measures that are flexible and responsive to the particular, specific, unique needs of each individual victim; or procedural accommodations that are required to ensure access to justice (such as modification of court and investigative procedural rules to ensure effective communication). Analysis under Principle 3 explores the gap in the provision for procedural accommodations in both the Directive and national implementation.

As explained in the analysis of Principle 1, one reason why universal design and procedural accommodations are not in place is because public authorities rely on appointing and then communicating with a guardian only and/ or excluding the victim from giving evidence based on 'credibility' tests. Victims with disabilities also face strict time limits within which they must request information about criminal proceedings, explored under Principle 4 and systemic barriers in accessing legal assistance, explored under Principle 6. This section sets out the limited, impairment-specific accessibility measures that have been put in place. The table below sets out some examples of accessibility measures in the partner countries and shows that, overall, national accessibility provisions are poor and, at best, uneven.

Table 3: National accessibility provisions

Country	Building adjs.	Website/ technology adjustments	Sign-language	Augmented communication	'Easy read'	Police guidance
Bulgaria	Yes, but not all police/court buildings.		Only as active participant in criminal proceedin			Yes, they should 'consider condition', but no specific guidance
Croatia		Yes	Only as active participant in criminal proceedin	Yes		Yes. Law allows police to request professional assistance to communicate with persons with disabilities
Czechia			Only as active participant in criminal proceedin			Yes, but not in public domain
Lithuania	Yes		Only as active participant in criminal proceedin	Yes. Prosecutor guidelines confirms right, but no guidance of what it means		
Romania			Only as active participant in criminal proceedin			
Slovakia			Only as active participant in criminal proceedin			Yes, but not in public domain
Slovenia	Yes, however comprehensive review by Ombuds found that most courts are inaccessible	Many other options to report, e.g. SMS, video, chat, etc; re website: adjs, re sight, dyslexia, however only partial because of 'disproportionate burden'	Yes. Universal and for criminal proceeding under criminal procedure act; have a hearing impaired call centr Slovenian sign language is recognised in the Slovenian constitution[88]	Yes. The new Resolution on the National Programme for Language Policy 2021-2025 (ReNPJP21-25, 2021)41		

88 On June 4, 2021, the National Assembly declared constitutional law supplementing Chapter II of the Constitution of the Republic of Slovenia with the entry of Slovenian sign language, sign languages of the Hungarian and Italian national minorities and the language of the deafblind. See, <http://www.gluhoslepi.si/en/slovenia-became-the-first-country-to-include-the-language-of-the-deafblind-in-the-constitution/> accessed 19 May, 2022.

In the sections below, the provisions listed in the table above are described and examined in more detail.

Building access

Researchers from several countries reported national provisions on improving the physical accessibility of premises used by the police and judicial agencies., Genova and Krasteva (Bulgaria) explain that Article 19 of Instruction № Iз-507 of 26 March 2008 for accommodations of the citizens and support of the victims of crimes in the structures of the Ministry of the Internal Affairs 'might be considered as a rule related to the physical accessibility of the police offices. (2022, p.20) The instructions, however, do not provide any specific requirements in case the victim is a person with disabilities. It should be noted that, in terms of physical accessibility there are very good and rich regulations at the national level, yet the links between these regulations and the Ministry guidance are missing, and these gaps are what victims with disabilities experience in practice.' National laws that do require disability access to public buildings are not referred to in these guidelines.

Grigaitė and Leonitė (Lithuania) state that existing sub-statutory regulation and government programmes mostly narrowly focus on the adjustment of buildings and housing, separate from the police and criminal justice institutions. However, they also report that many police stations and courts are not accessible to persons with disabilities. The Equality Ombuds Office has focused on the issue and found the Kaunas District Court to be in violation of existing regulations because a ramp installed was too steep to be accessible. (2022, p.24)

In Croatia, Špek and Štahan (2022, p.35) emphasise that in practice 'Most judicial bodies are located in old buildings which are inaccessible to persons with disabilities – especially for those with physical disabilities. There is a strong need to adapt court buildings to their needs that could be solved with universal design to ensure full exercise of their rights.'

Website/ technology access

Kapus et al, 2022 (Slovenia) outline how public information is not easily accessible to people with disabilities, for example,

> *'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.' (Slovenia, 2022, p.26)*

As mentioned in the introduction to this section, accessibility is a right under Article 9 of the CRPD.

Access to sign language, augmented communication and 'easy-to-read' information

All countries reported that, at a minimum, sign language is available to victims when taking part in criminal proceedings as a witness. In Lithuania, as outlined by Grigaitė and Leanaitė (Lithuania), according to publicly available prosecutor guidelines, the accommodation is only available if the victim is also assessed under Article 22 as having specific protection needs (see Principle 3 analysis). Grigaitė and Leanaitė (Lithuania) explain that 'According to the Recommendations by the Prosecutor General on the assessment of the specific protection needs of victims, the right to use services of an interpreter has also to be guaranteed to persons with an intellectual or psychosocial disability. However, Grigaitė and Leanaitė (Lithuania) remark, 'what exactly is meant by the interpretation for persons with such disabilities is not clear'.(2022, p.17) The Lithuanian Sign Language Interpreters Centre has confirmed that they do sometimes provide Sign language interpreting services at police stations and courts, 'however, they do not keep statistical data on specific types of clients (i.e. suspects, alleged perpetrators or victims).' (2022, p.30)

As noted by Genova and Krasteva (Bulgaria), there is publicly available guidance on the provision of sign language interpreters, however as the researchers explain, 'to be precise, these provisions refer to the accused or the witnesses and not even the victims in particular.' (2022, p.26)

As observed by Špek and Štahan (Croatia), communication support rights are relatively broad. As in other countries, victims who are participating in criminal proceedings have the right to sign language interpreting. The Ombudsman for Persons with Disabilities has also issued broader guidance for police and judicial institutions regarding identifying appropriate services for both interpreters and 'guides' for people with disabilities. The researchers report, 'The Croatian Association of Deaf and Hearing impairments is a network of organisations which can provide support and translators in most counties in Croatia freely upon contacting them' (p.27). Under national provisions, in cases of sensory impairments, means of communication must include text display, braille, tactile communication, enlarged printing and multimedia content, audio recordings, plain language, personal readers, and augmentative and alternative forms, means, and formats. Špek and Štahan (Croatia) explain,

> *'Moreover, if the victim has intellectual disabilities, the information must be provided in simplified language, while in cases of mental impairments, the person should be supported according to the gravity of his/her impairment.' (Croatia, 2022, p.27)*

Sležková and Pastorek (Czechia) explain that national law,

> *'addresses communication in the narrow sense of interpretation for those who do not understand Czech or who have a hearing or the combination of a hearing and visual impairment. Other forms of support in communication, including support for persons with intellectual or psychosocial disabilities, are not understood as an interpretation issue.' (Czechia, 2022, p.43)*

The provisions are the same in Slovakia. Dascălu, Dodu and Pascu (2022, Romania, p.21) explain that while there is a requirement to provide sign language interpretation where

needed, 'neither Law 211/2004 nor the CPC make explicit reference to the obligation of the authorities to adapt the language and information to accommodate the victim's access needs. This is coupled with a lack of internal regulations and procedures to ensure that victims fully understand the information they receive'.

Slovenia reported the relatively comprehensive provisions for people with hearing and other sensory impairments, which are covered by national legislation.[89] Provisions include a Hearing Impaired Call Centre, which provides 24-hour sign language interpreters and a range of other contact methods, including to report crimes. Similarly to other countries, victims with hearing and speech difficulties are entitled to use their language or a language they understand in the criminal proceedings, including the right to a free interpretation. However, there are no similar regulations concerning victims with psychosocial and intellectual disabilities in the Criminal Procedure Act. In a welcome development, according to the national researchers,

> *'The new Resolution on the National Programme for Language Policy 2021-2025…enables the development of adapted means of communication for people with disabilities, including people with sensory impairments, deafblind people, people with psychosocial disabilities, and other[s]. Though promising, it was only adopted in 2021; therefore, not much information on implementation is available.' (Slovenia, 2022, p.33)*

No countries reported the provision of 'easy read' information. The Slovenia researchers, Kapus et al reviewed general information brochures on, for example, 'Rights of victims of crime' and 'When I become a victim of crime', and similar publications by different public authorities related to criminal proceedings. They found that although they contain 'exhaustive information', they are inaccessible, and conclude that,

> *'Persons with intellectual and psychosocial disabilities experience barriers when practising their right to equal access to information and participation in proceedings, their chances of getting free legal aid or counselling are limited, making it harder for them to exercise their basic rights to access justice and participate in the justice system. This field of providing simple and accessible information urgently needs developing' (Slovenia, 2022, p.26)*

Overall, information about victims' rights that should be given to victims on their first contact with the authorities is not accessible. As explained by the Slovakia researchers, Sležková and Pastorek, 'The legal framework fails to incorporate any mechanisms ensuring that the documents are comprehensible for the victim. It only provides for translations of documents in foreign languages, not their adaptation to formats that are accessible for persons with mental disabilities and that can be understood by them' (p.36-7). We see more

89 On June 4, 2021, the National Assembly declared constitutional law supplementing Chapter II of the Constitution of the Republic of Slovenia with the entry of Slovenian sign language, sign languages of the Hungarian and Italian national minorities and the language of the deafblind. However, this important formal recognition still needs to be enacted in law and through regulations.

national examples of this problem under Principle 4, which result in victims not being informed about criminal proceedings.

Police or other agency guidance on access

In Bulgaria, an instruction from the Ministry of Internal Affairs provides rules on how police officers must interact with citizens, when they come to the police station to report a crime.[90] As Genova and Krasteva (Bulgaria, 2022, p.20) explain, 'There are a few provisions which may be interpreted as related to the rights of victims with disabilities, even if only on the surface. One of these provisions sets out the obligations of the police to take into account the physical and psychological condition of the victim. Another provision might be considered as a rule related to the physical accessibility of the police premises. The instructions, however, do not provide any specific requirements in case the victim is a person with disabilities. It should also be noted that, in terms of physical accessibility there are very good and rich regulations at the national level, yet the links between these regulations and the Ministry guidance are missing, and these gaps are what victims with disabilities experience in practice.'

In Czechia and Slovakia, police have some guidelines regarding victims with disabilities, however, these are not in the public domain. The prosecution service has no guidelines.

90 The Instruction № Із-507 of 26 March 2008, for accommodations of the citizens and support of the victims of crimes.

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

Guideline[91]

3.1 To avoid discrimination and guarantee the effective and equal participation of persons with disabilities in all legal proceedings, States shall provide gender- and age-appropriate individualized procedural accommodations for persons with disabilities. They encompass all the necessary and appropriate modifications and adjustments needed in a particular case, including intermediaries or facilitators, procedural adjustments and modifications, adjustments to the environment and communication support, to ensure access to justice for persons with disabilities. To the fullest extent possible, accommodations should be organized before the commencement of proceedings.

3.2 States shall ensure the provision of a range of procedural accommodations, while also ensuring that such accommodations are implemented so as to properly balance and respect the rights of all parties by, among other things:

Independent intermediaries and facilitators…

Procedural adjustments and modifications…

Communication support…

Procedural accommodations for persons accused of crimes, prisoners and detainees…

Requests for and offers of accommodations…

Principle 3: Directive and CRPD comparative analysis

> *'[Participation in criminal proceedings is] an extremely long, tiresome, ruthless process, even to those who are highly motivated and with a high capacity to give credible testimony…For the persons with disabilities the challenge is even bigger – in Bulgaria there is a lack of intermediaries who could support the process.' Interview with a director of a victim support organisation. (Bulgaria, 2022, p.8)*

> *'In general, during the proceedings, the victim, who is blind, was never asked about his preferred means of communication, and felt somewhat uncomfortable and disrespected that information about closing the pre-trial investigation came via regular post. This action stripped him of his right to privacy and data protection (as someone*

91 Full details of the procedural accommodations contained in the UN Access to Justice Principles under Principle 3 can be found here <https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/10/Access-to-Justice-EN.pdf> accessed May 9, 2022.

> *else had to read it out loud to him), when he is perfectly capable of using email and a phone independently.' (Lithuania, 2022, p.44)*

The quote above from the Bulgaria report well explains the daunting task facing any victim who takes part in the criminal justice process, and the kinds of barriers facing victims with disabilities. Principle 3 is central to achieving access to justice for victims with disabilities in the criminal justice process,

> *'To avoid discrimination and guarantee the effective and equal participation of persons with disabilities in all legal proceedings, States shall provide gender-and age-appropriate individualised procedural accommodations for persons with disabilities. They encompass all the necessary and appropriate modifications and adjustments needed in a particular case, including intermediaries or facilitators, procedural adjustments and modifications, adjustments to the environment and communication support, to ensure access to justice for persons with disabilities. To the fullest extent possible, accommodations should be organised before the commencement of proceedings.' (UN International Access to Justice Principles, Principle 3)*

Our comparative analysis examining the rights and experiences of victims with disabilities at the interface of the UN Access to Justice Principles and the Victims' Rights Directive provisions repeatedly reveals fundamental differences in normative orientation between the two frameworks. This is particularly the case with regard to the right to procedural accommodations. The Directive conceptualises victims as individuals with individual needs, to be assessed and met by the officials and gatekeepers of the criminal justice system, without explicitly acknowledging the often hostile and marginalising environments created by the same system. Conversely, the UN Access to Justice Principles' starting point is the recognition of the barriers to justice faced by people with disabilities whose human rights have been violated and the accompanying obligation on the state to guarantee an effective remedy by removing these environmental, attitudinal and physical barriers, and/or to put in place the necessary, individualised procedural accommodations that will guarantee equal access to justice.

The intention of our analytical approach is that the potential and required human rights based response to victims with disabilities is shown to be possible through the practical actions offered by the UN Access to Justice Principles. The challenge is to fit these actions into a system which does not currently place the victim and their rights at its centre. This section explores the evidence and implications of the gaps in the Directive before proposing ways they can be practically addressed.

The Commission Guidance on the Directive explains,

> *'The core objective of this Directive is to deal with victims' needs in an individual manner, based on an individual assessment and a*

targeted and participatory approach towards the provision of information, support, protection and procedural rights.'[92]

Recital 21 of the Directive states,

'...It should … be ensured that the victim can be understood during proceedings. In this respect, the victim's knowledge of the language used to provide information, age, maturity, intellectual and emotional capacity, literacy and any mental or physical impairment should be taken into account. Particular account should be taken of difficulties in understanding or communicating which may be due to a disability of some kind, such as hearing or speech impediments. Equally, limitations on a victim's ability to communicate information should be taken into account during criminal proceedings.'

European Commission Guidance on Article 3 of the Directive – the right to understand and be understood – explains,

'the Directive seeks to ensure that victims – based on their personal characteristics (including 'disability') – understand and can make themselves understood during criminal proceedings (linguistically or otherwise) and that authorities pro-actively assist victims to do so throughout the criminal proceedings.' [93]

The Commission Guidance 'invites' Member States,

'to consider developing procedures allowing authorities to assess the communication needs and constraints of each individual victim, from the victim's first contact with the criminal justice system. The assessment process should look at all factors affecting the victim's ability to communicate and include any language requirements or other needs that must be met to ensure the victim understands the information provided and is able to be understood. This assessment should also include all factors affecting the victim's ability to cope with the consequences of the crime'. [94]

Despite the clear intentions contained in the Directive and the Commission Guidance to the Directive, there is no established mechanism offered by the Directive to ensure that the authorities actually do 'proactively assist' victims with disabilities, such as implementing communication and information needs assessment processes, or providing intermediary and facilitation services. This would be a necessary starting point in ensuring that the State

92 European Union's Victims' Rights Directive (Directive 2012/29/EU) p.4, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029> accessed May 9, 2022.

93 DG Justice Guidance document related to the transposition and implementation of the Directive 2012/29/EU, p. 12. available at: https://ec.europa.eu/info/sites/default/files/13_12_19_3763804_guidance_victims_rights_directive_eu_en.pdf, accessed June 9, 2022.

94 Ibid, p.12.

fulfils its obligations in respecting and upholding the rights of victims to information and communication through the identification and implementation of appropriate procedural accommodations.

The formal procedural accommodation assessment and implementation framework that is offered by the Directive focuses on identifying and addressing specific protection needs without addressing communication and information rights. The key provisions in the Directive are:

- Article 22 'Individual assessment of victims to identify specific protection needs'; and
- Article 23 'Right to protection of victims with specific protection needs during criminal proceedings'.

Article 22 obliges Member States to ensure that all victims,

> *'receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.'* [95]

VRD Articles 22 and 23 identify several categories of victims to whom 'particular attention should be paid' when determining specific protection needs and explains, 'victims with disabilities shall be duly considered'.

Article 23 specifies the precise 'special measures', or procedural accommodations that are available to victims who are assessed as having 'specific protection needs' according to Article 22. These include measures that allow the adaptation of victim interviews (Article 23(2)) and court proceedings (Article 23(3)).

VRD Articles 22 and 23 are important provisions that are described by the Commission as, 'one of the major achievements in the Victims' Directive'.[96] However, they also reflect the core normative flaws in the Directive that affect all victims, and come into sharp focus when considering people with disabilities' access to justice. In effect, rights are recast as 'needs' that are then determined by the state (usually the police) who decide whether and how assistance or support will be given. This does not comply with State obligations under the CRPD, most notably UN CRPD Article 13, Access to Justice, ensuring persons with disabilities have access to justice 'on an equal basis with others, including through the provision of procedural and age- appropriate accommodations'. In contrast, the focus of the Directive is on assessing the 'vulnerability' of the victim and their 'need' for protection, and not the risks

95 Victims' Rights Directive (Directive 2012/29/EU), Article 22.

96 Ibid, p.44.

posed by the offender and the institutional barriers within the system, which further compounds the problem. This can be exacerbated by routine discrimination experienced by people with disabilities and the marginalisation of victims in the justice system.

The obligation to 'take into account the personal characteristics of the victim, including any disability' contrasts with a rights-based obligation to legal capacity and full participation rights. Victims' needs in relation to understanding and being understood should be assessed in light of how accessible the environment is and the particular communication support needs that the victim has as a result of the barriers presented by the criminal justice environment. Accommodations could include emotional support from a trusted person, communication support through sign language, an intermediary and/or augmented communication, and access to an appropriately experienced and skilled lawyer from the first stage of reporting. Directive rights to understand and be understood are disconnected from fundamental access to justice rights and the specific accommodations regarding ensuring information and communication that make them a reality.

Furthermore, secondary victimisation, although mentioned many times, is not defined in the Directive. As we explored in the introduction and Principle 1 analysis, disablist discrimination such as function-based assessments of capacity or guardian ad litem orders can give rise to discriminatory secondary victimisation because they interfere with the right to testify and to legal capacity respectively.[97]

When deciding if a victim has specific protection needs and therefore qualifies for measures available under VRD Article 23, it is explained, 'Victims with disabilities shall be duly considered since they typically have particular vulnerabilities'.[98] However, attaching the label of 'vulnerability' to people with disabilities is not consistent with a human rights model of disability. A rights-based approach would assume that the barriers to safety, information and communication put people with disabilities at risk and must be removed through the principles of universal design and individualised reasonable and procedural accommodations.

While the procedural accommodations offered by VRD Article 23, based on an individual needs assessment set out in VRD Article 22, should apply to any role given to victims in national legislation, in practice they seem to apply mainly to the role of an active participant in the proceedings (i.e. witness), and insufficiently to their role as a party to the proceedings. This reflects Dearing and Huxtable's concerns set out in the introduction that victims continue to be used mainly as an instrument in the State's case against the defendant, as opposed to fully participating as a party to the proceedings.

As explained by authors Sležková and Pastorek (Slovakia),

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97 The court may appoint a guardian ad litem for a person with disabilities, and this is a violation of the right to legal capacity in itself. The guardian ad litem may be authorised to act as a substitute decision maker on behalf of the person with disabilities. It may also be that the guardian ad litem is acting in addition to the victim, and is effectively supporting the victim and their will and preferences. While such orders are still a violation of the right to legal capacity, the practice may be less restrictive.

98 DG Justice Guidance, p. 44.

> *'The implementation of the VRD brought several measures to ensure smoother communication with the victim during the investigation stage of the proceedings. Nevertheless, practically all these measures have their primary aim to protect the victim from secondary or repeated victimisation and not to make him/her an active and full participant in the proceedings. The whole implementation of the Directive in Slovakia was in the spirit of ensuring that the victim was protected from secondary victimisation. Slovakia thus focused on introducing measures ensuring special protection of the victim, especially in his or her role as a witness of crime, but in a certain way lost sight of the victim's status as a party to criminal proceedings. It thus hasn't brought a system of supportive measures that could serve as procedural accommodations for the victim when exercising his or her procedural rights…The framework supporting effective communication with the victim beyond her role as a witness of crime seems to [be lacking].' (Slovakia, 2022, p.39)*

As expressed by Sležková and Pastorek (Czechia), 'the primary role of the victim in the criminal proceedings is that of a witness.'(2022, p.4) This is despite the fact that in Czechia, victims also have recognised rights as a party to the proceedings.

Genova and Krasteva (Bulgaria) explain the complete disconnect between 'social' and 'criminal justice' needs assessments processes and experts, and how criminal justice assessments are used to exclude rather than include victims with disabilities,

> *'the lack of proper coordination between experts in different areas can be extremely harmful…. The existing individual assessments do not take account of the needs of the person during the potential criminal procedures neither do the experts making these assessments have any idea what the criminal procedure looks like and what support the person may need during such a procedure. [At] the same time, the experts in the justice system are generally not aware of the needs that a person with disabilities might have and cannot even imagine, for example, the impact of an interview on the understanding and experience of the victim and the potential for re-victimisation. The gap in knowledge and understanding is so deep, that assessing a victim's need for support during criminal procedures is not even considered. Psychiatric assessments are not in any way focused on how the person's participation could be supported, validated and made credible, to enable the exercise of their legal capacity in criminal proceedings. Such approaches by nature further exclude victims with disabilities from participating in the justice proceedings.' (Bulgaria, 2022, p.21)*

The Directive does not counter these practices. The VRD Article 22 needs assessment, focused on protection needs, is to be carried out by public authorities that are supposed to be in a position to 'determine whether and to what extent they would benefit from special

measures' (A22 (1)). However, it is more likely that they are ill-equipped to identify and put in place procedural accommodations and instead might cause secondary victimisation while conducting an Article 22 individual needs assessment. Notably there is no communication/information barriers assessment referred to in VRD Article 22, the Directive Recitals or Commission Guidance. As observed by Špek and Štahan (Croatia), the individual needs assessment is 'not primarily focusing on the needs concerning communication and information, but on preventing additional intimidation and secondary victimisation during the procedure.' (2022, p.4)

While it isn't appropriate to automatically share data between social care and criminal justice agencies, and specific consent would be needed from the individual concerned, a process of coordination across public authorities and an obligation regarding universal screening could support the identification of communication and support needs.

The UN Access to Justice Principles, *Principle 3 Guideline* provide a blueprint for the amendment of the Directive to ensure the victims with disabilities have their right to procedural accommodations implemented throughout the EU. The Directive has very important provisions that could and should be incorporated into its existing procedural adjustment assessment and implementation framework, as set out in the table in Annex D and are further explored in the next section.

As explained by one of the expert reviewers of this report,

> *'The rights based approach's goal is to fulfil the victim's right to be heard and recognised in a way that protects the victim - contrary to the basic tendencies of criminal justice - from secondary victimisation'. It should include the right to be heard, 'in a setting that is encouraging, outside the courtroom, avoiding confrontation'. This right and these adjustments are, 'not a matter of the vulnerability of victims living with a disability but an expression of the right to testify in an atmosphere that inspires security and comfort as a compensatory measure, with support in communication.'*[99]

Reorienting the Directive's procedural accommodation framework towards a rights based approach

The Member States that are involved in this research as well as the European Union itself are bound by the CRPD and its access to justice obligations, including the requirement to identify and put in place any necessary procedural accommodations. However, as we have seen, the instrument that guarantees the rights of victims of crime in the European Union– the Victims' Rights Directive– does not clearly articulate the meaning of these rights or their resulting obligations in terms of access to criminal justice. As a result, the chances of CRPD

99 Thank you to Albin Dearing for this insight.

rights being implemented on the ground for victims of crime with disabilities are greatly reduced.

Having a clear process for the assessment and implementation of procedural accommodations regarding access to information and communication rights is central to the realisation of access to justice for people with disabilities. Communication support in the form of intermediaries and facilitators, technology and infrastructure that enables augmented communication, separate waiting rooms, video-recorded interviewing among other approaches, create a 'bridge' between the victim and the criminal justice system, potentially enabling persons with disabilities to understand and be understood within the system. Any piece-meal or incomplete approach to identifying and implementing procedural accommodations makes the difference between participation and inclusion on the one hand and unlawful silencing and exclusion on the other.

As indicated above, the Directive does not guarantee a process for identifying and implementing the full range of procedural accommodations, especially in the area of communication and information. However, the basic rights are in place in the Directive. Member States are required to ensure victims' rights:

- to understand and be understood (VRD Article 3),
- to receive information (VRD Articles 4 and 5),
- to remain informed (VRD Article 6),
- to be provided with an interpreter and translation (VRD Article 7),
- to be supported (VRD Article 9),
- to be heard during criminal proceedings (VRD Article 10),
- and to protection generally (VRD Articles 18, 19, 21) and specifically (VRD Articles 22 and 23).

In effect, the rights contained in the Directive would and should support the UN CRPD Article 13 right to access justice for persons with disabilities

The table in Annex D maps State's obligations set out in the VRD against the procedural accommodations outlined in Principle 3 of the UN Access to Justice Principles, which are designed to support UN CRPD Article 13. The analysis in the table shows the major gaps, and details where there are opportunities to bring the Directive in line with the UN Access to Justice Principles by emphasising a rights-based approach to access to justice and expanding and strengthening a procedural adjustment and assessment framework and mechanism for people with disabilities to access their rights to information and communication under the Directive.

Article 22 is the only required needs assessment mechanism in the Directive for all victims and Article 23 sets out the only stipulated procedural accommodations available to any adult victim of crime. The table in Annex D illustrates how the framework provided by VRD Articles 22 and 23 only covers procedural accommodations that relate to protection against intimidation and secondary victimisation in the course of criminal proceedings. In other words, there is only a fraction of overlap with the procedural adjustment assessment and implementation framework that would be required to fully comply with UN CRPD Article 13 (Access to Justice) in practice.

As explained above, VRD Article 22 must be revisited to reflect a rights-based, not 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, also through the provision of procedural accommodations. As such, rather than being an assessment of victims' individual vulnerabilities and 'need' for protection, VRD Article 22 is an assessment, in dialogue with victims, of the barriers that need to be removed, and the accommodations to be put in place for them to access their rights under the Directive. Simply introducing further assessment duties without this interactive obligation keeps the victim in a passive role and the object of 'official', often medicalised assessments. In the context of the duty to provide reasonable accommodations, the Committee on the Rights of Persons with Disabilities' General comment No. 6, explains, 'reasonable accommodation requires the duty bearer to enter into dialogue with the individual with a disability'.[100] In the case of identifying and putting in place procedural accommodations, the need for dialogue is the same, and the identified necessary accommodations cannot be limited by the concept of disproportionality. The UN Access to Justice Principles, Principle 3 gives the blue-print for the Commission and Member States to ensure a comprehensive needs assessment process and matching procedural accommodations. Finally, rather than a limited list of procedural accommodations related to protection needs, VRD Article 23 could be expanded to include all necessary procedural accommodations that are required for equal access to justice.

Principle 3: National implementation and gaps

National researchers across the seven countries found few examples of cases that progressed through all stages of the criminal justice process. There were no examples of victims with disabilities having their needs for and rights to procedural accommodations properly assessed and met. As such, national evidence reflects the gaps examined in detail above. However, all countries exceed Directive requirements by including the right to sign language as a procedural accommodation where victims have the role of active participants in the proceedings.

A 2017 report commissioned by the European Parliament evaluating the implementation of the Directive explained, 'An area where most of the Member States have made significant progress, both at the legislative and administrative level, is individual assessment (Article 22 of the Directive).'[101] However, in the 7 countries researched in the Voices for Justice project, this progress was difficult to assess as there are no clear guidelines for criminal justice professionals on VRD Article 22 individual needs assessments in the public domain. Researchers also reported that where they do take place, the individual needs assessment is carried out by police who are generally untrained and arguably have too much discretion

100 Committee on the Rights of Persons with Disabilities, General comment No. 6 (2018) on equality and non-discrimination, 26 April 2018, § 24 (b).

101 European Implementation Assessment of the Victims' Rights Directive, p. 14, available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2017/611022/EPRS_STU(2017)611022_EN.pdf, accessed June 9, 2022.

regarding whether a victim qualifies for any procedural accommodations specified under Article 23.

There are several examples where a VRD Article 22 needs assessment prescribed by national law, and in line with the Directive, is still not being carried out. i.e. the Victims' Rights Directive has been transposed but not implemented. For example, in Bulgaria, special protection needs are not identified by a needs assessment, but by forensic examination, in breach of Article 22. The court or the competent bodies of the pre-trial phase are also allowed to decide at their discretion whether the victim is at risk of secondary and re-victimization, etc. and if such expertise is needed in the first place. By definition, a victim has specific protection needs when 'extra measures for protection' are needed against secondary and re-victimization of the victim, intimidation, etc. No explicit regulation is provided though as to what kind these measures should or might be (Genova and Krasteva, Bulgaria, 2022).

According to Špek and Štahan (Croatia) VRD Articles 22 and 23 have been well-transposed into national law, however they have not been effectively implemented in practice. For example, specialist support organisations found, 'that individual needs assessments are rarely carried out and often not in accordance with the legal and regulatory provisions'. (2022, p. 26) The Act on Police Affairs and Powers states, 'when collecting information from a person with a disability, the police officer will, when he deems it necessary, seek the help of a person who has knowledge of the correct way of communication and treatment of a person with a disability, depending on the specifics of each individual case' (2022, p.30). However, the police reported a shortage of such experts.

Špek and Štahan (Croatia) also share an example of good practice where the court allowed a juvenile victim who was profoundly deaf to give evidence in writing, even though it was challenged by the State on the grounds that it violates the Croatian Criminal Procedure Act. However, overall the authors found that,

> *'Although the individual needs assessment could and should be used to assess the needs of victims, it is not recognised as a tool serving a better inclusion of persons with disabilities in the 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' (Croatia, 2022 p.26)*

Sležková and Pastorek (Czechia) outline that the Victims Act provides the victim with rights that correspond to Article 22 and 23 of the Directive. Victims also have the right to be accompanied by a support person and to apply for measures to avoid contact with the suspect. However, again, the evidence suggests that these rights apply to the victim's role as a witness of crime and, 'not to promote his/her opportunity to exercise his/her procedural rights as party to the criminal proceedings' (p.25). Further, the practice of repeated interrogation is allowed by the courts due to a concern that it would otherwise be in breach of fair trial obligations, despite being in breach of the Czech Victims Act for 'particularly vulnerable' victims.

Sležková and Pastorek (Czechia), observe that the Victims Act led to significant developments in victim support services, however, 'projects addressing the intersectionality of disability and victimisation are rare in Czechia and if such projects exist, they usually focus on a specific aspect of victimisation, not on the situation of persons with disabilities as victims of crime in general'.

> *'Women with intellectual or psychosocial disabilities don't really turn to us. You could say very little. And we may wonder why. Why they can't even get to this counselling service. Or it's definitely an incentive to us as well. For us, the question is then how much we would be able to provide the service in a way that makes it well accessible. Now, I think about a client with a visual impairment, there's a pretty good way to handle it. But with intellectual or psychosocial disability, I wouldn't know how to proceed. I must admit that the service is not that accessible…' Worker of a victim support service for victims of domestic and sexual violence (Czechia, 2022, p.39)*

In Lithuania police officers have the obligation to conduct individual needs assessments 'despite not having any official and mandatory training on effective communication with persons with various types of disabilities' (Grigaitė and Leanaitė, Lithuania, 2022, p.5). The Prosecutor General has set recommendations on the assessment of the specific protection needs of victims. According to the evaluation form provided by these recommendations, the criteria for the assessment of specific protection needs fall into three categories: 1) type of crime (e.g. whether violence was used and what type of violence, what kind of damage was suffered, objects against which the crime was committed); 2) victim background (e.g. health, social circumstances, relationship with the perpetrator, dependence on the perpetrator, signs of psychological trauma); and 3) perpetrator information (identified or not, individual or a group, previously convicted or not). 'Thus, disability would be one of the many factors to be taken into account when conducting individual [needs] assessment[s]' (Grigaitė and Leanaitė, Lithuania, 2022, p.21).

In Lithuania, the participation of an accompanying person in criminal proceedings or parts thereof may be restricted by a decision of the pre-trial investigation officer, prosecutor or a judge where such participation is 'assessed to be contrary to the victim's interests or impedes the investigation or proceedings'. In practice this right is not usually allowed by pre-trial investigation officers, 'as there is no regulation on how the participation of an accompanying person should be formalised, for example, whether they should be warned for liability for unauthorised disclosure of pre-trial investigation materials, and if yes, in what way.' (Grigaitė and Leanaitė, Lithuania, 2022, p.42). In 2018, an NGO Human Rights Monitoring Institute sought clarification from the Office of the Prosecutor General seeking. The response was distributed among police stations; however, there have been no steps to issue official guidelines on the implementation of the right to have an accompanying person.

Evidence from Lithuania suggests that the measures that are finally applied are 'not related to the outcome of the individual needs assessment'. 'Interviews with pre-trial investigation officers revealed that they perceive the procedure of individual needs assessment, which is

usually conducted by police officers at the crime scene, as a mere formality,... and noted that the results of these assessments have no real impact on the proceedings.' (Grigaitė and Leanaitė, Lithuania, 2022, p.22).

According to Grigaitė and Leanaitė (Lithuania) the only provision of the General Prosecutor recommendations regarding individual needs assessment concerns the provision of an interpreter. In the Recommendations it is stated that this measure is mandatory 'if the victim does not speak the Lithuanian language or has a speech, hearing or mental disability'. However, as the authors point out, 'the right to interpretation and translation actually is a procedural right, and should not be considered as a special protection measure, [and] there are no explanations on what was meant by 'interpretation' for victims with mental disability.' It should be noted Lithuania is the only country which refers to interpretation needs that are based on a 'mental disability'. Although there is no current guidance on this point, the provision itself provides a basis on which to develop such guidance. (2022, p.17).

According to Dascălu, Dodu and Pascu (Romania), 'Although Romania has the legislative framework to ensure that the protection needs of victims with disabilities are met, there are very few clear guidelines for judicial authorities on how to carry out individual assessments, in accordance with the individual needs and specific circumstances of the crime, as detailed in the Directive'. (2022, p.5)

Kapus et al (Slovenia) explain that the hearing of a witness who is a victim with special protection needs may, depending on their personal circumstances, be conducted with the assistance of an expert in the relevant profession. A person of their choice may be present unless this would be contrary to the interests of successful conduct pre-trial or criminal proceedings or the benefits of a witness. In addition, if a witness is, by reason of age or disabilities, unable to attend court, their testimony may be heard from their home. However, as explored elsewhere, the mere presence of another adult is not a procedural adjustment in itself. In addition, the language of the provision is not compliant with a human rights concept of disability. (2022, p.35)

Sležková and Pastorek (Slovakia) report that the VRD Article 22 right to an individual assessment was explicitly incorporated in the national legislation but broader assessments regarding necessary procedural accommodations for the victim's practical and effective participation in the proceedings have not been transposed. (2022, p.20) Various other procedural accommodations are also available during court proceedings including, giving evidence over video link, and ensuring the avoidance of contact between victim and defendant. Overall, this national framework reflects the Directive's procedural adjustment assessment and implementation framework outlined in the international analysis above, but it is not aligned with CRPD access to justice obligations.

Worryingly, Sležková and Pastorek (Slovakia) found, 'if the expert examination finds that the victim's capacity to testify may be impaired, or if the court does not find an effective way…to communicate with a victim, the court will be only rarely willing to rely on the evidence given by the victim and rather prefers to set the offender free or to go for a lighter qualification of the offence only to the extent that it can be proved by other means.' They conclude, 'This may be a logical consequence of a deficits model approach on identifying

incapacities and inadequacies in the victim rather than on what useful evidence the victim can provide and how the victim can exercise his or her rights.' (2022, p.53)

Two examples of good practice identified by Sležková and Pastorek (Czechia) show what has been achieved by motivated and skilled individuals, and what could and should be supported at the national level.

> *'I created this two-page information document for the Police with the basic steps. "Do you think the victim is particularly vulnerable? – Do this and this." It was formulated in bullet points with pictures. And one of the victims who contacted me on the Police's recommendation brought it back to me. I was very pleased to see the document in use. But then again, it's used by Police officers attending victim rights training sessions.' Attorney specialised in victims' rights (Czechia, 2022, p.43)*

> *'Two of the three victims with intellectual disabilities I represented (one with her legal capacity restricted) did not have to go to trial. We had the interrogation video recorded, and I agreed with the prosecutor about not asking for their re-interrogation. If the victim already has to go to trial, I always make sure that the courts check what time the trial starts, what time my client is supposed to be there, I want to know if it will be from a special room, whether the voice will be modified, and to make sure that the victim and the defendant do not meet. And I have to say, maybe with the two courts I go to most often, I have this set up already perfectly. But asking for this somewhere else... It took a lot of effort to get there, and you can't give up after the first two failures. It's been going great for the last two years now. Those courts I go to, already know how to communicate with victims. But it required two or three complaints on the judge's behaviour. For example, were they able to ask a victim of rape, "And why do you want the money?" But we've cleared that up, and that question hasn't been asked in a very long time. But those beginnings were rough.' Attorney specialised in victims' rights (Czechia, 2022, p.58)*

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

Guideline

To guarantee the right to timely and accessible information, States shall:

- **(a)** *Enact enforceable laws, regulations, policies and guidelines that fully recognize a right to timely notice and information about all aspects of judicial processes;*
- **(b)** *Ensure that information about justice systems and procedures can be accessed by various methods, including, as appropriate and needed:*
    - *(i) Sign language;*
    - *(ii) Video and audio guides;*
    - *(iii) Telephone line advice and referral services;*
    - *(iv) Accessible websites;*
    - *(v) Induction loop, radio or infrared systems;*
    - *(vi) Amplification devices and document magnifiers;*
    - *(vii) Closed captioning;*
    - *(viii) Braille;*
    - *(ix) Easy Read and plain language;*
    - *(x) Facilitated communication;*
- **(c)** *Ensure that all notices that require a response or an action to be taken (e.g. summonses, subpoenas, writs, orders and sentences) are available by accessible means and in accessible formats, such as those listed above in guideline 4.1 (b);*
- **(d)** *Ensure that notices and information include clear understandable information about how a procedure works, what to expect during a process, what is expected of a person, where to get help with understanding the process and the person's rights in the process, in language that is not merely a repetition of the statute, regulation, policy or guideline – for example, plain language;*
- **(e)** *Ensure that support is available in real time for individuals who need assistance to understand notices and information by providing, for instance, interpreters, guides, readers, intermediaries and facilitators, and other forms of support.*

Principle 4: Directive and CRPD comparative analysis

Principles 3 and 4 are strongly linked with each other and aligned with the focus of the Voices for Justice research on information and communication access rights. Article 4 of the Directive, Right to receive information from the first contact with a competent authority covers several of the CRPD requirements set out in Principle 4. Commission guidance makes it clear that 'the principle requirement of Article 4 is to ensure that victims effectively understand the information given (as required by Article 3)'. Article 3 mentions the importance of considering the needs of victims with disabilities in this regard (see above analysis under Principle 3). Guidance on Article 4 acknowledges that 'the main challenge is to develop appropriate tools that make different types of information accessible to

victims'.[102] However, the given examples of such tools (e.g. website, booklets and leaflets) indicate that the meaning of 'accessible' is not rooted in, and does not reflect CRPD obligations. UN Access to Justice Principle 4 includes 10 different ways that access to information can be enabled, including sign language, video and audio guides, telephone line advice and referral services, facilitated communication, braille, etc. None of these forms of communication and information provisions are mentioned in the Directive or associated Guidance.

Recital 21 explains that 'Information and advice provided by competent authorities, victim support services and restorative justice services should, as far as possible, be given by means of a range of media and in a manner which can be understood by the victim. Such information and advice should be provided in simple and accessible language'. Recital 21 also guides States to 'take into account the victim's intellectual and emotional capacity…and any mental or physical impairment'. It explains, 'Particular account should be taken of difficulties in understanding or communicating which may be due to a disability of some kind such as hearing or speech impediments.' As explored in detail in the analysis of previous Principles, Commission guidance does not root this obligation to 'take into account' disability in access to justice obligations. Rather, the language personalises 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.

There is a serious risk that national authorities can interpret this guidance as suggesting that an appropriate way to 'take account' of disability would be to only share information with a guardian and/or to determine that the victim is unable to be communicated with at all. Our national analysis below shows that where a guardian is appointed, the police simply bypass the victim entirely and 'fulfil' their Article 4 obligation by communicating directly and only with the guardian. Although the Directive is silent on legal capacity rights, this practice would certainly be in violation of the CRPD.

The Commission Guidance refers to 'needs based evaluation', however, this only relates to the extent or detail of information that needs to be shared regarding a particular stage of the proceedings, not to the information and communication access needs of the victim. As set out in our Principle 3 analysis above, there is no explicit, required mechanism to assess victims' access needs when receiving information.

Article 4, of the Directive explains that the right to information applies from the first contact with the competent authorities, which is determined by law. The Bulgaria researchers point out that the definition of 'victim' is unclear, and in particular, the point at which someone gains victim status and therefore access to victim's rights. (2022, p. 5) We return to this point in our analysis of Principle 8.

The Guidance invites Member States to consider 'consulting Member States that already have experience with good practice of police sharing information with victim support

102 European Union's Victims' Rights Directive (Directive 2012/29/EU) p.14, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029> accessed May 9, 2022.

organisations so that they can assist individual victims.' Article 3 also requires Member States to share information with victims about support services. Working to ensure that victim support services can assess information needs and keep victims informed accordingly could be promising for victims with disabilities. However, national analysis suggests that very few victims support organisations have the skills, knowledge and relationships necessary to support victims with disabilities.

Article 6 of the EU Victims' Rights Directive, Right to receive information about their case, is similar in strengths and weakness to Article 4. The victim's rights also depend on their defined role in the proceedings, and national analysis shows that victims with disabilities are often denied their rightful status as both a party to and active participant in criminal proceedings.

The situation of persons with disabilities in institutions must also be considered. They are physically restricted from accessing the outside world and are under the direct supervision of staff. As a result, there should be additional, explicit obligations on the state/staff to proactively ensure access to their Article 4 and Article 6 rights under the Directive.

Principle 4: National implementation and gaps

Overall, it appears that the implementation of the Member States covered in this research have legally transposed the general requirements regarding access to information set out in Article 4 Right to receive information from the first contact with a competent authority and Article 6 Right to receive information about their case, practical implementation is inconsistent. Further, the widespread practice of denying legal capacity outlined in the analysis of Principle 1 means that people with disabilities' are denied any access to legal notices and information in the first place. Uncertainty about the definition of 'victim' at the national level, and therefore when their rights actually apply is also a serious problem at the national level, which is further explored in the analysis of Principle 8 below. Several case studies illustrate poor information sharing and communication that would be in breach of CRPD and the Directive. There are also some indications of good practice.

Genova and Krasteva (Bulgaria) report that all victims of crime have the right to receive information about their procedural rights upon their first contact with, for example, the police or a victim support organisation. In practice, the victim is provided with a pre-prepared form setting out their rights including the right to medical, psychological and legal help and to compensation. (2022, p.22) The first contacted authority (which in most cases is the police) should also explain everything that is in the form and take into account the 'age' and 'condition' of the victim. However, in practice, the information is not presented in accessible formats, the appointment of guardians is common, which can mean that victims do not receive information directly, and it isn't clear when the victim 'role' and therefore their rights apply in the process. For example, when they report an incident or when the police decide to launch an investigation. Genova and Krasteva explain,

> *'there are even fewer obligations on the court to provide information to victims with disabilities…Needless to say, with such general rules and no specific mention of disability, we can only rely on the level of*

> *professionalism of people working in the system and providing support in the hope that the support they provide would be tailored to any disability the victim might have and that they would recognise that there is a disability in the first place. In other words we depend on wishful thinking.' (Bulgaria, 2022, p27)*

As observed by Špek and Štahan (Croatia), after reporting a crime, the police must provide the victim with a 'Victims' Rights Notice,' which also contains contact information of victim support organisations. The Police are obliged to ensure victims understand their rights and how to exercise them. However, researchers explain, 'based on internal reports of public events held by organisations of victim support services, and on the experience of staff working at the National Call line for victims 116006, there are still cases in which the police don't comply with this obligation, and even when they do, often they do not explain anything to the victims'. Further the notice has not been adapted to the needs of persons with disability. (2022, p.28)

Sležková and Pastorek (Czechia) found that the national victims' law, 'fails to implement the "without necessary delay" principle' and that, 'the whole provision of information [is] rather formal and takes the form of a document that is handed over to the victim.' (2022, p.40) There are no specific provisions requiring criminal justice authorities to explain the decisions to victims in an understandable manner. If the victim is not legally represented, the decision is usually delivered by post. There is no Easy Read version of the information document. The researchers found that the police do not believe that this format would comply with legal requirements. However, those who support victims with disabilities think that such a tool would be very useful,

> *'The Police should make comprehensible information documents that would not include the text of the law, but simple information in the form of, for example, comics. This would be targeted at people who have difficulties understanding the legal text. This could help everyone, not just persons with disabilities. The trauma of the victims also causes them to be unable to read and perceive the text properly at the Police station.' Attorney specialised in victims' rights (Czechia, 2022, p.43)*

In a case study presented in the Czechia report,

> *'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.' Until the interview with the researchers, the Victim did not know that she could require information about the offender's release or escape from detention. 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.' (Czechia, 2022, p.33)*

In Czechia, national legislation does not regulate the provision of information in the post judicial stage of the proceedings. Although victims have rights that are not dependent on the status of the injured parties in the criminal proceedings, they are not systematically informed about them, including when being delivered the final judgement. Even if the final judgement refers the victim to civil proceedings for their claim for damages, the framework does not require the court to provide the victim with more detailed information about how to proceed or where to find appropriate support. The court also does not need to inform the victim about their right to financial support. (2022, p.59)

In Lithuania, the right to information was transposed by obliging the Prosecutor General to develop and adopt a standardised 'letter of rights' for victims. According to the Prosecutor General's order, every victim should receive the standardised 'letter of rights' and sign a form, confirming that they were explained their procedural rights. According to the national researchers,

> *'The document is more than 5 pages long, contains [a] description of 18 rights and is written in a formal and technical language. Neither the form nor the wording meets the requirement of 'easy to read', 'easy to understand' or 'simple and accessible language' required by the Directive, as it is difficult to read and understand for any person without a legal background. There has been no version of the 'letter of rights' or any other materials tailored to the potential needs of persons with disabilities.' (Lithuania, 2022, p.19)*

At the same time, Grigaitė and Leanaitė (Lithuania) point out the limitations of receiving written information in the post in terms of accessibility and confidentiality, in addition to treating a person with dignity and respect.

> *'Regarding the registered post and receiving a paper-typewritten letter from the police, as a blind person, the victim expressed that such communication demonstrates a general lack of respect and raises several issues: 1) Even if the letter is not handwritten and is possible to read using certain mobile apps, it might not be accurate; 2) Receiving information electronically, by email, would enable the person to feel respected and fully independent; 3) Having to ask someone else to read the paper letter out loud raises issues of privacy and data protection.' (Lithuania, 2022, p.44)*

According to the Lithuanian Code of Criminal Procedure the victim has the right to receive information on the state of criminal proceedings involving them. In practice, victims must proactively approach the pre-trial officer or the prosecutor in charge of the investigation to receive this information. According to Grigaitė and Leanaitė (Lithuania), 'The level of detail provided depends on the victim's perseverance and officer's good will as there are no protocols in place discussing when and what information should be provided to the victim. As a matter of attitude, some representatives of the law enforcement consider an inquiry about the state of the proceedings as 'interference' with the investigation and withhold information on this ground'. (2022, p20)

Grigaitė and Leanaitė (Lithuania), conclude, 'Victims of crime with disabilities have reported that a humane attitude and respectful communication was often missing in their encounters with police, along with a lack of general support or taking them seriously, lack of information about the next steps and processes, what to expect and when, updates, and outcomes. Similar tendencies were observed concerning both the reporting and the pre-trial stages.' (2022, p.30)

In Romania, the judicial bodies are obliged to inform the victims about all of their rights as set out by national law. However, there are no formal mechanisms to ensure that victims truly understand the information communicated to them, except for providing an interpreter (including a sign language interpreter, and an unspecified interpreter for people with 'cognitive impairments') where necessary. Overall, there is no guidance on how to ensure that victims with disabilities understand the information given to them. (Dascălu, Dodu and Pascu, 2022, p.6)

In Slovakia, the legislation does not require that the victim is provided with all the listed information on the first moment they meet law enforcement authorities but guides the authorities to consider the victim's 'legitimate needs', including his or her age, mental capacity, health condition, including mental health condition and the nature of the crime. It also requires the police officer or the public prosecutor to assist the victim in contacting a support service. However, the provision of assistance depends on the victim's request as opposed to an automatic referral by the police. The victim has several procedural rights also at the courts stage, but there is no obligation on the courts to inform them of these rights. There is also no obligation to ensure that the information is comprehensible. (2022, p. 26)

Finally, although the Slovakian legislative framework not only enables but requires the maximum individualisation of the information provided to the victim, in practice, information is presented in an inaccessible format:

> *'No victim is able to understand and read the (miniature) text of the information document he or she will be given by the Police. Just coming to the Police and report[ing] a crime is a trauma for the victim. All that remains is to entertain and empathise with the victim in an acceptable way and explain to him or her in turn what he or she has rights to. This must be done sensitively, because it can be exhausting for him or her, etc. It doesn't have to be the Police's fault that the victim doesn't immediately understand the information and procedures because he or she's traumatised.' (Slovakia, 2022, p.27)*

Sležková and Pastorek warn about the consequences of failing to engender a human rights concept of disability in the Directive and national law; an exposing theme throughout this report, 'The obligation to consider the person's age, mental capacity, and health condition, including mental health condition, may be understood in an environment with a prevailing medical approach to disability as an excuse for not providing the victim with any information, neither the information document on the grounds that the victim couldn't understand it anyway.' (Slovakia, 2022, p.27)

In a promising development, the Slovakian Ministry of Interior is setting up a network of information contact points for victims, open to all victims, 'The coordinators and assistants

working at the contact points confirmed that even though it is not common, they have already been contacted by persons with intellectual or psychosocial disabilities or by their relatives.' (Sležková and Pastorek, Slovakia, 2022, p.28)

In Slovenia, with every court invitation to the hearing to participants, there are some instructions with explanations if they do not come to the hearing, how to file an appeal. In the last paragraph, it is explained that if you are a person with a disability, you have the right to equal participation in the process (Kapus et al, Slovenia, 2022).

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

This Principle is one of the most important regarding access to justice rights. It is also guaranteed by Article 47 of the Charter of Fundamental Rights.[103] Access, through legal aid, to a suitably qualified and experienced lawyer can serve as the bridge of communication and information for people with disabilities and can be the single most important factor to ensure their effective participation. Those national partners who have years of experience in supporting victims with disabilities identified this right as central to protecting access to justice. However, as our analysis under Principle 1 shows, where victims with disabilities are denied their threshold right to legal capacity, they are also unable to instruct a lawyer and are thus excluded from rights specified under this Principle.

This Principle is designed to apply to a broad range of situations–including civil and criminal–and roles, including as a victim, witness or defendant. This analysis focuses on the applicability of the Principle to people with disabilities who are victims of crime and on their rights to information and communication in particular. The Principle explains that all people with disabilities have the right to free or affordable legal assistance in all legal procedures and proceedings that relate to 'violations of human rights', which presumably includes all crimes. States must enact and implement laws that afford the right to legal assistance in all judicial matters regardless of the role of people with disabilities. There is a particular obligation to provide free 'legal assistance and support to all persons with disabilities who have experienced violence, in particular women and girls with disabilities, including professional victim support, advice about legal rights, and assistance in reporting crimes and initiating legal proceedings.' The obligation on states to create, fund and implement legal assistance programmes to provide free legal aid does not explicitly include 'matters concerning' victims of crime except when it relates to loss of legal capacity. This is understood to mean that where a victim of crime is appointed a guardian, there should be a funded legal assistance programme in place that can support that person to challenge this decision. Bearing in mind the wording of the UN Access to Justice Principles under Principle 6, it should be assumed that this obligation to create and fund specific legal assistance

103 'Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.'

programmes applies to victims of violent crime, especially women and girls.[104] The Principle encompasses the infrastructure that must be in place to support communication between lawyers and their clients, including intermediaries and the use of augmented communication, which has been identified as essential by national researchers and links back to the procedural accommodations needs assessment and implementation frameworks explored in Principle 3.

Principle 6: VRD obligations and gaps

Article 13 of the Victims' Rights Directive imposes the obligation to ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings,

> *'Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law.'*

This article is much more narrowly drawn than CRPD rights. Nevertheless, it includes important provisions. According to the Commission guidance, Article 13 means that 'national law must provide for the appropriate legal framework to ensure that victims have the right to legal aid.' While Member States define the conditions and procedures for ensuring this right, according to the guidance, 'if a victim has the right to access legal aid under national law, it should at least cover legal advice and legal representation free of charge.'[105]

The Guidance 'invites' Member States to consider particular steps to fulfil Article 13 VRD rights and to 'specify under what conditions and circumstances victims are able to access legal aid…bearing in mind the need to ensure equal access to justice, and victims' rights to a fair remedy'.[106] However, national analysis shows that the legal certainty of access is not clear in all Member States and that equal access for victims with disabilities is not protected. There is a missed opportunity in the Guidance to define and explain what 'equal access' on the grounds of disability means.

The Guidance suggests that Member States consider, 'Adopting administrative procedures to implement victims' access to legal aid, without excessive bureaucratic requirements. Good practice suggests that application forms for legal aid should be available in a range of different languages, or assistance should be given to victims not speaking the official language of the country but looking to apply for legal aid.'[107]

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104 United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities (Geneva 2020), para. 62(k), p. 21. <https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/10/Access-to-Justice-EN.pdf> accessed May 9, 2022.

105 European Union's Victims' Rights Directive (Directive 2012/29/EU) p.34, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029> accessed May 9, 2022.

106 Ibid. p. 34, point 47.

107 Ibid. p. 34, point 48.

However, the opportunities to specifically identify the importance of ensuring application forms are available in a range of formats that are accessible to a range of impairments, or to ensure the availability of reasonable and procedural accommodations for people to understand their rights to legal representation are missed.

The Guidance also suggests that Member States ensure that victims are informed about how and under what conditions they can access legal aid in their first contact with the competent authorities.[108] This is important, however, it is also subject to the same barriers of access to accessible information with regard to their other rights.

Making access to legal aid a matter of national law can make access particularly difficult for people with disabilities. There are no access guarantees for this right, which is fundamental to the exercise of legal capacity, particularly for victims with disabilities. It must also be remembered that guardianship orders preclude people with disabilities from instructing a lawyer in the first place.

Although not explicitly referenced in the Principles, the quality of legal assistance is also a key consideration. There is a significant lack of specific training in communicating with persons with disabilities, or disability rights, as well as experience with the specific areas of law relevant for persons with disabilities (e.g. guardianship, institutional care, etc.).

In the ECHR case of Artico v. Italy, the court held that the right to legal representation includes the requirement that the assistance is 'effective'.[109] Arguably, for the right to legal assistance to be effective, it must be of a certain quality, and, for that, specialised training on representing people with disabilities is essential (see also Principle 10).

Principle 6: National implementation and gaps

National researchers found significant barriers to accessing legal assistance. In most countries, free legal aid appears to apply to crime type, or vague definitions of 'vulnerability', which are not CRPD compliant. The application process for free legal assistance is often the responsibility of the victim, administratively heavy, needs to be completed within strict timescales, and depends on the knowledge, good will and action 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.

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108 Ibid. p. 34 point 49, linked to Article 4, paragraph 1(d)

109 European Court of Human Rights. Court (Chamber) Case of Artico v. Italy (Application n. 6694/74) Judgment. Strasbourg, 13 May 1980. <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiNu77cq4n3AhVNILcAHRR6CCAQFnoECBEQAQ&url=http%3A%2F%2Fhudoc.echr.coe.int%2Fapp%2Fconversion%2Fdocx%2F%3Flibrary%3DECHR%26id%3D001-57424%26filename%3DCASE%2520OF%2520ARTICO%2520v.%2520ITALY.docx%26logEvent%3DFalse&usg=AOvVaw2V55ovPiTZIm3CNBmV7ayX> accessed 8 May, 2022.

In Bulgaria all victims have the right to legal advice in any phase of the criminal proceedings. Victims can qualify for legal aid, but only if certain requirements are met, for example, persons who are placed in residential care or those who can prove a lower financial status. There is not an automatic right to legal aid for people with disabilities.

> *'I have noticed that there is a serious factual barrier at first meeting (when reporting a crime) a person (with disabilities). Often due to stress and…poverty…and so I am not sure whether it is even understood what the legal help actually is…I found out that the officers have told them 'you need a lawyer, you have to fill out an application, go and find a lawyer'. This way people were practically sent back…out of inertness.' Interview with a district judge (Bulgaria, 2022, p.26)*

> *'The victims are afraid to fill out an application for a lawyer as they are afraid that they will have to pay….The procedure for appointment of a lawyer is easier for the accused, at the discretion of the district prosecutor, while for victims there are more documents required.' Interview with an investigating police officer (Bulgaria, 2022, p.25)*

In Czechia, the criteria for free legal representation is that a victim is assessed as 'particularly vulnerable'. Children and victims of certain crimes fall into this category, as well as if 'a person has a physical, mental or psychosocial handicap or sensory impairment which in interaction with various barriers may hinder full and effective participation of this person in society compared to its other members' (Sležková and Pastorek, Czechia, 2022, p.22). The police determine 'particular vulnerability', depending on internal guidelines that are not in the public domain. This approach introduces vague criteria for the provision of legal aid and gives unwarranted discretion to, often, untrained and ill-equipped criminal justice professionals.

According to Grigaitė and Leanaitė (Lithuania) 'disability' as such is not grounds for victims to qualify for state guaranteed legal aid, unless it is 'severe disability' or unless there is evidence of low income (2022, p.46). Victims of specified crimes can also qualify for free legal assistance. Similarly, Dascălu, Dodu and Pascu report that in Romania, free legal representation is provided for victims of specified crimes and/or a specified income level. 'Disability' itself is not a qualifying factor (2022, p.34).

Slovakia has a high threshold for qualifying for free legal assistance. The victim must meet the following criteria: they must have already applied for damages; they must show that their income is sufficiently low; and, the judge must rule that the legal representation is necessary for the protection of the victim's interests.

As commented by Sležková and Pastorek (Slovakia),

> *'A victim with a mental disability would thus first have to prepare a claim for damages and fill in an application proving his or her financial and material condition and even in such case he or she still does not have any legal certainty that he or she 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.' (Slovakia, 2022, p.40)*

In an example of relatively good practice, in Croatia, 'persons with emotional disturbance' have the right to a lawyer. The court will appoint a lawyer if the victim is unable to pay. The Law applies to all roles in criminal proceedings.[110] (Špek and Štahan, Croatia, 2022, p.28)

Too often the police and the courts are the gatekeepers to legal representation. In Czechia the courts rarely appoint a lawyer, 'effective access to an attorney for a particularly vulnerable victim depends heavily on the specific police officers and their previous good experience with specific attorneys'. The researchers Sležková and Pastorek explain,

> *'Article 13 of the VRD imposes the obligation to ensure that victims have access to legal aid, where they have status of the parties to criminal proceedings. The conditions or procedural rules should be determined by the national law, but the national law must comply with the basic requirements of legality. It must be clear, foreseeable, and accessible so that it ensures the rule of law instead of rule of persons. Unfortunately, the vague formulations of the Czech Victims Act do not meet these requirements and do not provide victims with the necessary legal certainty that they have the right to free legal representation in the proceedings and that they will not be asked at the end of the proceedings to reimburse the costs of their attorney, if they have any. This significantly deprives the right to legal aid for particularly vulnerable victims as enshrined in the Czech legislation of its effectiveness.' (Czechia, 2022, p.64)*

And the following insight of a specialist attorney is shared,

> *'In law, free representation by an attorney for particularly vulnerable victims seems very simple but its implementation is very difficult. I criticise the way victims get to the attorney. It absolutely does not work by appointing an attorney by the court. If investigators have experience with an attorney, they'll call him/her and say, "We've got a person here who meets all the requirements, we'd give him/her your number, and make some kind of arrangement, because we don't feel this person is going to make it."' So, the access to an attorney is dependent on the investigators, and they contact concrete attorneys they have confidence in. There are no applications for free representation by a lawyer in my home court. So, it's all handled by the Police, and when they make their own assessment, then they'll recommend an attorney, or these people*

110 As explained by the Croatia researchers, 'It must be noted that the expression of 'persons with emotional disturbance' referring to people with disability can be considered as derogatory language which can strengthen harmful stereotypes such as assuming that a knowledge of psychiatry is useful to a person with a disability.'

> *won't get to have an attorney.' Attorney specialised in victims' rights (Czechia, 2022, p.41)*

In some cases, due to unclear criteria regarding qualification for free representation, the victim might be liable for costs at the end of the trial. This means that some lawyers have to take on cases where they are not sure that they will get their costs paid.

For example, in Czechia, the court decision on reimbursing the costs of the attorney acting as the person's legal agent is adopted only at the end of the proceedings, thus introducing great uncertainty and risk for victims. The researchers' evidence suggests that this provision is used to limit financial assistance and therefore restrict access. One attorney commented,

> *'We don't specialise in victims' rights much - it takes heart and that you enjoy it, not that you want to make a profit. But you can't lose out because we all pay rent and employees. And the moment that it's just that we have to subsidise it, we just let it go, and even though the legal aid was originally meant to protect victims in a criminal trial, we start saying to them, "Okay, we'll take it over, but put down a CZK 70,000 (about €2,800) deposit." Which of course no one will, resulting in either no criminal activity being reported at all, an increase in latency…which is not what the legislature had in mind when it passed the bill.' Attorney specialised in victims' rights (Czechia, 2022, p.50)*

Even if someone does qualify and apply on time, there is a shortage of suitably experienced and trained lawyers, undermining access to 'effective' representation explained in the introduction of this section. There is also a shortage of specialist victim support organisations, which might act as a 'gateway' to legal support. For example, Sležková and Pastorek (Slovakia) explain, 'The situation of victims with mental disabilities is further exacerbated by the poor net of organisations that specialise in assistance to victims of crime and that would be also able to accommodate victims with mental disabilities.' (2022, p.40).

Sležková and Pastorek (Czechia) report that there is a good practice of a memorandum of cooperation between police and 'largest wide-ranging victim support organisation with non-stop helpline and offices in 9 regional cities.'. In addition, 'PMS (probation mediation service) with its 74 centres (organisational units) represent another important supportive network for victims of crime, practically the only one which is actually available throughout the territory of the Czech Republic and for all victims. The Police have the legal obligation to inform victims about the services of the PMS and in practice should pay particular attention to those victims who need more support since the officers of the PMS have more opportunities to provide information to victims in a calmer and more accommodating environment. The effectiveness of the cooperation may, however, vary between police departments and depends significantly on their leadership as well as the specific policemen.' (2022, p.41)

There is very little, and in many countries no data, on whether people with disabilities are accessing legal aid. For example, as observed by Grigaitė and Leanaitė in Lithuania, 60 victims of domestic violence, including people with disabilities, were granted legal aid in

2019. There are no figures for 2020 (2022). Dascălu, Dodu and Pascu (Romania) confirmed that no data is collected in this area.

In addition to the barriers set out above and at the beginning of this section, where the right to free representation does exist, it comes into effect after the investigation has been started, making it almost impossible for a victim to challenge a decision to not investigate. In effect, legal assistance is completely inaccessible to many victims with disabilities.

Several national reports include important recommendations regarding free legal representation and the availability of suitably experienced and qualified lawyers. Sležková and Pastorek (Czechia) conclude, 'The right to free legal representation in the criminal proceedings by an attorney acting as the victim's legal agent seems to be one of the most important safeguards for the victim's practical and effective participation in criminal proceedings'(2022, p.23). The researchers call for the inclusion of 'disability' within the definition of 'particularly vulnerable victim' to be clarified, in order to ease access to legal aid, and to ensure that 'the right to free legal representation extends to the start of criminal proceedings, in the same way they are available for the accused'. Romania called on the government to ensure that all legal aid lawyers have the skills, knowledge and experience to represent victims with disabilities. Slovakia recommended that the right to legal aid in criminal proceedings for 'particularly vulnerable victims', be extended to include victims with mental disabilities and to remove the barriers outlined above.

National researchers demonstrate the link between ensuring access to legal assistance, access to legal capacity and identifying and putting in place the necessary procedural accommodations (see analysis on Principles 1 and 3 above). Sležková and Pastorek (Slovakia) bring these points together: 'a lawyer acting as the person's legal agent could act as a measure of supported decision making. Together with the necessary communication support for instance in the form of support of a communication intermediary or accessible formats of legal documents, appropriate procedural accommodations could be the CRPD compliant alternative to the guardianship order, which is simply a measure of substitute decision making'.(2022, p.40)

Genova and Krasteva (Bulgaria) call for free legal aid for all persons with disabilities who suffer from any form of violence, abuse or crime, with no income criteria. Recalling the procedural accommodations explored in Principle 3, they also highlight the importance of a comprehensive individual needs assessment, 'on the need of any type of support to facilitate the effective participation of the victim in all court and out-of-court procedures. It goes without saying that along with the above, the professionals from the system are to receive proper training in order that they would be able to recognise when an intermediary and individual assessment are needed in the first place.'(2022, p.39)

This example from Sležková and Pastorek (Czechia) shows the tenacity of a lawyer who will fight for their clients, as well as the ways in which judges can intervene and ensure that the law is being followed and rights are upheld:

> *'I had a case of a 12-year-old girl with an intellectual disability who was the victim of multiple rapes in a psychiatric hospital. I stood up in court to point out that if she was the perpetrator she would have*

an immediate right to an attorney. And the judge came down on me, saying it wasn't his fault, it was the prosecutor's and the Police's. And I said to him, "Your honour, you ordered the main trial without an attorney for the girl. And I got to the case two days before the court hearing. You didn't give a damn that the kid didn't have an attorney.' Attorney specialised in victims' rights (Czechia, 2022, p.54)

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[111]

Guideline

8.1 States must have accessible, easy-to-use, transparent and effective mechanisms for individuals to report complaints about human rights violations and crimes. Complaint adjudicators and tribunals must provide remedies that are individually tailored and may include redress and reparation.[112]

Principle 8 goes to the heart of tackling the 'blank space' identified by the Voices for Justice consortium and introduced at the beginning of this report. Micherva and Krasteva (Bulgaria) comprehensively summarise the complex web of factors that explain, but do not excuse the fact that many people with disabilities do not and cannot access the roles of 'complainant' or of 'victim' in Europe's civil and criminal legal systems, and thus their rights to an effective investigation and remedy.

'The most disturbing phenomenon is that many crimes against persons with disabilities remain unreported. One reason is that the crimes against persons with disabilities are often not recognised as criminal acts. Sometimes practices that are abusive, inhuman and segregating are only seen as the possible option for the person with disability. For example, persons with disabilities are often denied their right to work or to live independently. They are being deprived of their liberty in residential care settings or psychiatric hospitals or subjected to medicalization, etc. Prejudice and poor training of the professionals involved are one side of the problem. Another issue is the lack of real community-based services. [Although] the described situation, which is a direct result of the poor implementation of CRPD rules and principles in Bulgaria, seems like something not directly [connected] with the crimes and violence against persons with disabilities, it creates conditions for [their] problems…[these conditions include] the high number of persons with disabilities in the

111 This section also considers Principle 9 'Effective and robust monitoring mechanisms play a critical role in supporting access to justice for persons with disabilities.'

112 United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities (Geneva, August 2020), Principle 8.

country who are highly dependent on their caregivers. Here go the persons with disabilities who are placed in residential care settings, also persons under guardianship and those who live in the community and are taken care of by a relative. In all three cases the lack of alternative support makes these caregivers/guardians a life maintaining factor for the person with disability, someone without whom they would not be able to do anything, practically and legally….Abusive relationships and with the caregiver/guardian being the perpetrators themselves, the conflict of interest becomes inevitable. And even sometimes the problems raised in the above cannot reach the stage where we may consider them as a crime, they have a high importance in terms of the disability rights orientated criminal justice. The described problems create the ground of the abusive, violent and inhuman and degrading treatment of the persons with disabilities and must be taken into account in any discussion of how to make the criminal justice more friendly to the persons with disabilities.' (Bulgaria, 2022, p.38)

Here we see the range of human rights violations and crimes that people with disabilities can experience and the need to have an investigation and remedies framework that can actually respond. To encompass people's lived reality, the starting point should be to ask what are the human rights violations that are being experienced and what are corresponding remedies? Then, advocacy should focus on whether the right remedies actually exist, whether they are accessible to people with disabilities and what mechanisms are needed.

For Principle 8 to be implemented, for many people, nothing short of a complete reorientation of criminal and civil complaint, investigation and adjudication systems, institutions and culture at the international and national levels is needed. The scale of this challenge and the necessary transformation, has been a constant theme in this report. Voices for Justice started with a relatively modest focus on victims with disabilities' rights to information and communication as victims of crime, and an aim to explore what is happening to support their access to these rights at the intersection of the CRPD and the Victims' Rights Directive. As the research got underway, the 'blank space' emerged along with the big questions of rights, justice, safety and equality it presents. We have tried to acknowledge, articulate and explore these questions, while also staying focused on the practical and technical gaps and issues that our examination of the interface between CRPD access to justice rights and the Directive's framework identified. We hope that we have managed to situate this exploration in the context of the equally urgent broader challenges that go well beyond the jurisdiction of the Directive and the mandate of this project.

This section maps the Directive's provisions against Principle 8 and focuses on three key problems identified in the national reports. First, victims experience specific barriers to reporting complaints and initiating proceedings. Second, a lack of clarity about the definition of 'victim' hinders victims' access to their rights regarding an effective investigation and remedy. Third, a range of human rights violations commonly experienced by people with

disabilities are not recognised anywhere in national criminal or civil legislative frameworks. The section concludes by exploring Fiala-Butora's (2013) proposals for a framework of offences, remedies and investigation, adjudication and oversight processes that cater to people with disabilities' actual experience of widespread human rights violations, which may or may not currently be reflected in national criminal and civil legislative frameworks and procedures.

Principle 8: VRD obligations and gaps and national analysis

Article 1 explains, 'The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings'. As examined under other Principles, the Directive specifies victims' rights to information, communication and protection following a report, after an initiation of criminal investigation and during criminal proceedings. However, the substantive right to initiate an investigation or 'to be afforded an effective remedy' are defined by national laws that specify the crimes for which an investigation can be initiated and procedures by which victims can be afforded a remedy.

The Directive confers several specific rights to victims at the stage of reporting a complaint. Article 5(1), Right of victims when making a complaint, explains, 'Member States shall ensure that victims receive written acknowledgement of their formal complaint made by them to the competent authority of a Member State, stating the basic elements of the criminal offence concerned.'. Article 5(2) and (3) obliges Member States to ensure that victims can make a complaint in the language they understand, 'or by receiving the necessary linguistic assistance', and that they receive translation 'free of charge'. Recital (63) highlights the importance of support in reporting crimes and of training practitioners 'who are likely to receive complaints'. It also states that 'measures should be put in place to enable third-party reporting, including by civil society organisations'. Finally, the recital explains, 'It should be possible to make use of communication technology, such as e-mail, video recordings or online electronic forms for making complaints'. Recital (64) confers obligations on Member States regarding collecting data on the number of reported crimes.

These are important rights, however, our analysis under previous Principles[113] show that the Directive does not account for where a victim with disabilities is under a guardianship order and, as a result a 'formal complaint' process is unavailable to them. Further they will not necessarily have access to reasonable or procedural accommodations at the point of reporting (Principle 3). Our analysis under Principles 2 and 4 showed that there is limited accessible information about how to report, and about victims' rights at the time of reporting and throughout investigation and criminal proceedings. Analysis under Principle 6 shows that there are barriers to accessing informal or legal support at the reporting stage.

113 See especially Principles 2,3,4 and 6.

Barriers to reporting

Kapus et al (Slovenia) gave several examples of poor responses to reporting crimes,

> *'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.'*
>
> *'I went with a friend to report sexual abuse to the police. The police officer didn't relate to him, their attitude was like they don't trust him. They were mostly talking to me, turning to me for answers and not to him. And I wasn't even there when all this happened. I remember that for a long time after this, he wasn't feeling well. Situations like these stays with you. He talked about what happened a lot, and what was done to him.'*
>
> *'I think professionals don't take people seriously, once they figure out that they have [a] mental health disability. Sometimes it is true that a lot of things happen to you, paranoia for example, but it is not always like this. And even when they really should react, they don't.' (Slovenia, 2022, p.27)*

As explained by Sležková and Pastorek (Czechia), 'The whole process can lead to further victimisation, regardless of all the protection measures adopted in favour of the victim. It is thus not surprising that especially victims of interpersonal violence do not trust the criminal justice system and often prefer not to report the offences committed against them' (2022, p.4). Kapus et al (Slovenia) explain, 'Victims often mention that they have a feeling that professionals at various institutions and organisations are not aware of how little is actually needed to make a person feel accepted and heard. They say the response is often cold, officials give a sense of inaccessibility and do not inspire enough confidence in the victims for them to be able to tell honestly and comprehensively what they have experienced'. (2022, p.28)

Genova and Krasteva (Bulgaria) give an example of a positive initial police response.

> *'One afternoon she found the inner strength and went to the police station. She came across a young police officer who was very polite and helped her report the crime. The first thing that the police officer said to her was "J., what is happening? You are a child of a colleague of ours!" "He always took the time to hear me out when I went to the police station."' (Bulgaria, 2022, p.27)*

However, the case reached court but was returned to the police where it was handled by another police officer, 'who was absolutely untrained to deal with such cases'. (2022, p.27)

Lack of clarity regarding victim status

Further, there is a lack of clarity about when 'victim status' is applied, according to the Directive. As cited above, Article 2 explains, 'For the purposes of this Directive the following definitions shall apply: (a) "victim" means: (1) a natural person who has suffered harm, including physical mental or emotional harm or economic loss which was directly caused by a criminal offence; (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death'. The first sentence of Recital 22 implies that victims' rights should apply from the moment a complaint is made, without specifying the qualification of the complaint (e.g. 'formal'), or the response to the complaint (e.g. investigation is initiated). The second sentence of Recital 22, implies a more limited definition of complaint, 'where authorities initiate criminal proceedings'. Article 2 applies a higher threshold of where a person has 'suffered harm…which was directly caused by a criminal offence'. We have already highlighted the fact that this definition is narrower than a rights based approach, which defines a 'victim' by the violation of rights that they have suffered, as opposed to whether harm was caused. Here we see that Article 2 and recital 22 limit the applicability of the Directive to where national police and justice systems have determined that 'harm' has been suffered and that its cause is a criminal offence.

Micherva and Krasteva (Bulgaria) explain the important consequences of these provisions at the national level,

> *'The definition of a "victim" itself creates confusion as to the moment from which a person who has experienced a crime is to be considered a victim. The way the definition is worded The Criminal law uses "injured" persons, which shows that the victim receives "victim status" not immediately after he/she became a victim of crime, but only if the investigation body collects enough evidence that the crime has happened and the perpetrator is known. The effect of this is to undermine the victims' status and rights within the justice system, so that they may not even be recognised as a 'victim'. The authors recommend that the legislative framework in Bulgaria is amended to recognise 'victim' status from the moment a harm is done, along with all the associated rights and obligations.' (Bulgaria, 2022, p.40)*

Where people are detained in institutions or live at home and are dependent on a caregiver they may not be able to access a phone, police station or other means of reporting an incident active measures must be taken by the State to ensure effective monitoring, reporting and complaints mechanisms in all services involving or accessed by people with disabilities. The Directive should acknowledge this and explicitly address States' duties to ensure access to reporting mechanisms for victims in these situations.

Decriminalisation of torture, ill-treatment and violence against people with disabilities

The physical and chemical restraints that are commonplace in institutions not only amount to torture and inhuman and degrading treatment in violation of Article 3 of the European Convention on Human Rights, but are routinely found to be lawful by national courts.[114] As such these 'structural human rights violations'[115] are not within the purview of national criminal codes and police investigatory powers, or the reach of the Victims' Directive.

For example, The Constitutional Court of Slovakia found that 'Ms. X' being put in a netted caged bed was not unlawful, because the practice is allowed by national law. Sležková and Pastorek (Slovakia) explain,

> *'[The constitutional court] did not even try to hear Ms. X's experience and find out the circumstances of her placement in the netted cage-bed; they relied solely on the hospital's report and the national legislation. For Ms. X this meant not only the inaccessibility of justice but also the inaccessibility of any support which should be available for victims of crime although the harm she suffered may not be less serious than the harm caused by more conventional offences.' (Slovakia, 2022, p.33)*

In Czechia, the public prosecution office found that a person with a psychosocial disability who was forcibly hospitalised, subjected to chemical restraints and strapped to a bed for more than 24 hours was not a victim of a criminal offence, because the 'intervention' was allowed by law and justified by medical opinion and assessment. Sležková and Pastorek Czechia) explain,

> *'Examples of…structural human rights violations appearing in the Czech Republic include the use of restraints in psychiatric hospitals or forced detention based on the presumption of the "dangerousness" of the person. Victims of these interventions do not have access to adequate support to rehabilitate from the harm suffered although this may be at least as serious as the harm caused by violence which is determined by the Criminal Code as a criminal offence. Furthermore, the fact that the system and all the public institutions legitimise the violence against them even worsens the suffered harm.' (Czechia, 2022, p.5)*

Micherva and Krasteva (Bulgaria) conclude that the practice of institutionalisation is inherently violent,

> *'Preventing violence and crimes in these residential settings, both in the big old institutions and the new small group homes, is practically impossible. This is because of how these settings are organised and*

114 János Fiala-Butora (2013), 'Disabling Torture: The obligation to investigate ill-treatment of persons with disabilities, 45 Colum. Hum. Rts. L. Rev. 214 2013.

115 Czechia report, see quote below.

> *how they operate. Their institutional nature fosters an environment of abuse and a lack of any real protection for the victims behind the walls. The prevention of violence in institutional care is the prevention of institutionalisation itself.' (Bulgaria, 2022, p.30)*

Incidents against people with disabilities that do amount to crimes under national criminal codes are also rendered invisible. The report or testimony of the victim themselves is dismissed by a system that routinely decides that they lack legal capacity or that their evidence lacks 'credibility'.[116] Responsible authorities are not raising awareness of or providing universally accessible information about crime and people's rights should they be a victim of crime.[117] Linked to this, a major barrier is that crimes are never reported. As explained by Micherva and Krasteva (Bulgaria),

> *'The most disturbing phenomenon is that many crimes against persons with disabilities remain unreported. One reason is that the crimes against persons with disabilities are often not recognised as such. Sometimes practices which are highly abusive, inhuman and segregating are only seen as the one option possible for the person with disability.'[118] (Bulgaria, 2022, p.38)*

Discriminatory violence against people with disabilites

People with disabilities can be victims of crimes with a discriminatory element, also known as disability hate crimes.[119] While outside the scope of this report, any violation of Article 21[120] European Charter of Fundamental Rights is an additional wrong that must be investigated by the police and remedied.[121]

Filling/ reconstructing the 'blank space'

As expressed by Micherva and Krasteva (Bulgaria) 'In order to get to the idea of reporting a crime there must be recognition that there is a crime at all.'(2022, p.14) In fundamental ways, Europe's criminal codes, and its policing and justice systems simply do not offer an accessible route to reporting complaints, initiating criminal proceedings or, ultimately, an effective, or 'individually tailored remedy' for many victims of crimes and other human rights violations. The barriers facing victims with disabilities in particular can seem insurmountable. This section examines work to strengthen people with disabilities' access to an effective investigation and remedy, and the role of the CRPD and its monitoring body. It

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116 See discussion under Principles 1 and 3.

117 see discussion under Principle 2.

118 See discussion under Principle 8.

119 Hate crimes are criminal offence committed with a bias motivation, see www.hatecrime.osece.org.

120 'Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.'

121 See also the case law of the European Court of Human Rights pertaining to hate crime, for example,

then returns to the human rights framework introduced at the start of this report to connect people with disabilities with these ongoing debates.

Starting with the fact that much of the crime and abuse that people with disabilities experience–especially in institutions, but also in their own homes–amounts to ill-treatment, in violation of Article 3 of the ECHR, Fiala-Butora (2013) draws on the jurisprudence of the European Court of Human rights (ECtHR) to highlight several key binding obligations on public authorities: to not commit Article 3 violations; to prevent them; to conduct an effective and timely investigation when such violations occur, whether by public authorities or private individuals; and, to provide an effective remedy.[122]

Fiala-Butora explains that a process is needed to bring appropriate instances of ill-treatment within the purview of the criminal law. 'If criminal investigation is accepted by the [CRPD] Committee as a suitable mechanism for combatting ill-treatment, this must be accompanied by a requirement to immediately transpose the substantive norms on ill-treatment to domestic criminal laws'.[123] At the same time, there are instances of structural violations which may not be appropriately dealt with by the criminal law. Criminal law and criminal investigations require that 'perpetrators' are specified individual(s). However, many human rights violations suffered by people with disabilities are often enabled by systemic policy failures that allow physical and medical restraints and institutional neglect. Fiala-Butora explains, 'A criminal investigation into such complaints cannot provide a solution to systemic failures and cannot be considered effective'.

Such cases need a different reporting and investigatory framework involving specialised bodies to investigate the ill-treatment of persons with disabilities, where they liaise with police in the case of criminal offences and where they have a duty to investigate under the Convention in instances of non-criminal cases of ill-treatment. Fiala-Butora argues that since the ECtHR, 'has so far been unable to make the shift in its understanding of the connection between ill-treatment and disability and adapt its standards to meet the need of people with disabilities, it is for the CRPD committee to develop 'detailed standards', under Article 15, to ensure that obligations for an effective investigation and remedy are discharged by the State.[124] This also requires complementing criminal law remedies by internal complaint mechanisms and monitoring mechanisms for victims of ill-treatment.

> *'The establishment of internal complaint mechanisms within and under the control of institutions for persons with disabilities should also be taken much more seriously under the CRPD than it was by the European Court. As these procedures often act as gatekeepers in the investigation of ill-treatment, some procedural guarantees should be applicable to them, such as the right for the complainant to be heard, the right to support and representation, the right to appeal, protection from further victimisation, and a requirement that decisions be made by an impartial body. Failure to act on an internal*

122 See Fiala-Butora (2013)pp. 252-269.

123 Fiala-Butora (2013), p.275.

124 Fiala-Butora (2013), p. 218.

complaint or to maintain an internal complaint mechanism should be considered with the same strictness as a failure to initiate a criminal investigation. If taken seriously, instead of being an obstacle to pursuing justice, internal complaint mechanisms could turn into a useful tool in combating ill-treatment.'[125]

While the project did not include a consideration of internal complaint mechanisms, it is useful to consider Principle 9[126] in this context, which explains that 'States have an obligation to designate independent frameworks to promote, protect and monitor implementation of the rights of persons with disabilities and their equal access to justice. To ensure independent monitoring, States shall either provide the necessary mandates and resources to established monitoring mechanisms or create new ones where they do not exist'.

This Principle is also not directly addressed by the Directive however it is essential when considering how to support access to justice, especially for people with disabilities who reside in institutions. For example, under the Optional Protocol to the UN Convention against Torture, States have the obligation to monitor the living conditions of 'care' facilities. While these bodies do not have the power to instigate criminal proceedings or effectively punish perpetrators, their findings can trigger criminal proceedings, and, as a practical matter, they may have better knowledge about the situation in a particular institution than prosecuting authorities. As such they are key partners for people with disabilities as well as criminal investigating bodies. A consideration of how to appropriately include these monitoring mechanisms into a review of the Directive as well as the EU Strategy on Victims' Rights and the EU Disability Strategy is vital.

It must be stressed that independent monitoring should not replace or hinder direct access by people with disabilities to make complaints to the police themselves. Further, the CRPD prohibits the institutionalisation of persons with disabilities thus making the practice at least a human rights violation and, in some circumstances, a crime in and of itself.[127] While the monitoring of services and supports for persons with disabilities is required under Article 16(3) CRPD, they cannot be seen as legitimising the institutionalisation of people with disabilities or as an alternative to national criminal investigative and prosecution authorities.

National researchers reported a general disconnect between those bodies that have responsibility to monitor the rights of people with disabilities on the one hand and police and criminal justice partners on the other. For example, while all countries have some form of equality body or ombudsperson, with responsibility to monitor the conditions and

125 Fiala-Butora (2013), p.278.

126 UN Access to Justice Principles, Principle 9: 'Effective and robust monitoring mechanisms play a critical role in supporting access to justice for persons with disabilities.'

127 The United Nations Committee on the Rights of Persons with Disabilities has developed Guidelines on de-institutionalisation for States. This was published for global consultation during June 2022 available at, <https://www.ohchr.org/en/treaty-bodies/crpd/regional-consultations-and-guidelines-deinstitutionalisation-article19> accessed 7 June, 2022.

experiences of people with disabilities, their focus on crime, victimisation and ill-treatment, or policing and criminal justice responses is very limited or non-existent.

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.

Guideline

10.1 States must remove barriers to justice for persons with disabilities by providing training on the rights of persons with disabilities to all justice officials, including the police, judicial officers, lawyers, health professionals, forensic experts, victim service professionals, social workers, and probation, prison and youth detention staff.

UN Access to Justice Principles frame training as part of States obligations to 'remove barriers to justice for persons with disabilities' and stipulate ten actions to meet this aim. Involving people with disabilities in the design of training, imposing legal obligations to take part in training, and providing access to training for people with disabilities and their families themselves are all included.

Principle 10: Directive and CRPD comparative analysis

Article 25 of the VRD requires that MS 'shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to their contact with victims and to enable them to deal with victims in an impartial, respectful and professional manner'. The Directive does not specify what is meant by 'specialist'. Commission guidance explains that Member States' 'obligations in the area of training include developing awareness of "victim's needs" in a professional, non-discriminatory manner.' However no practical examples are given and disability is not specifically mentioned in the context of 'non-discrimination'.

Principle 10: National implementation and gaps

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 training would be based on a human rights model of disability or include States' obligations to eliminate disability discrimination in the justice system.

Genova and Krasteva (Bulgaria) reported that The Persons with Disabilities Act in 2019 introduced an obligation that police and criminal justice practitioners are trained to work with persons with disabilities.(2022, p. 33) However they were unable to find any data on whether the trainings have taken place. Sležková and Pastorek (Czechia) also reported that

The National Plan to Support Equal Opportunities for Persons with Disabilities 2021-2025 requires training on communication with persons with disabilities for judges, public prosecutors, and other judicial staff. These training sessions are organised by the Judicial Academy of the Czech Republic. However, attending the training is voluntary (2022, p.57).

Špek and Štahan (Croatia) concluded that, 'The findings of this project shows that there are insufficient personnel within social, police and judicial bodies with special education on communicating with people with disabilities.(2022, p.29) 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' (2022, p.29). Špek and Štahan (Croatia) also highlights important limitations in NGOs services and networks' ability, knowledge and skills to support victims with disabilities.

> *'The role of NGOs would be also important in the field of communication and providing information, however there are some problems in that domain. NGOs dealing with victims and persons with disabilities are separated i.e. there are NGOs specialised in working with persons with disabilities and others support victims and witnesses, but their knowledge and expertise do not overlap. Thus, they cannot provide full, broad and adequate support for victims with disabilities. Better collaboration between the two groups of NGOs and specialised trainings for their staff could solve this issue. The only example of an existing service covering both fields of expertise is the SOS helpline run by SOIH aiming specifically to help female victims with disabilities.' (Croatia, 2022, pp. 33-34)*

Summary

> *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)*

The EU Victims' Rights Directive explicitly sets out to describe and establish the rights of victims of crime, including victims with disabilities. The analysis in this section has highlighted the shortcomings of the Directive in policy and the implications in practice for persons with disabilities, in light of the UN CRPD obligations under Articles 12 (Equal recognition before the law) and 13 (Access to Justice). But more specifically, by applying the UN Access to Justice Principles as an analytical framework, the intention is to provide a foundation for elaborating and strengthening the Directive so that it supports the UN CRPD in detail as well as aspiration. The next section, Conclusions and Recommendations, develop these ideas.

5. Conclusions and Recommendations

This report has assessed the EU Victims' Rights Directive's[128] provisions against the UN International Access to Justice Principles[129], based on the Convention on the Rights of Persons with Disabilities (CRPD), drawing on evidence from *Voices for Justice* national reports. It has shown that while the Directive puts in place many of the key obligations to help ensure that reporting, investigation and criminal proceedings are victim-focused, and recognise rights to information and communication, there are fundamental differences in normative orientation between the two frameworks. The Directive conceptualises victims as individuals with individual needs, to be assessed and met by the officials and gatekeepers of the criminal justice system, without explicitly acknowledging the often hostile, and marginalising environments created by the same system. Conversely, the UN Access to Justice Principles' starting point is the recognition of the barriers to justice faced by people with disabilities whose human rights have been violated and the accompanying obligation on the state to guarantee an effective investigation and remedy. We conclude that the Directive must be strengthened in specific ways to meet access to justice obligations under Article 13 (Access to Justice) of the UN CRPD.

Europe's criminal justice systems are characterised by cultures and practices that marginalise the rights of all victims of crime. The 'blank space' identified by the project consortium testifies to the further marginalising of victims with disabilities, caused by the entrenched barriers and daily discrimination people encounter in all parts of life, and which are particularly acute for people residing in institutions. Those who do enter the criminal justice space are placed in the position of an examined object of the proceedings, often subjected to repeated assessments which are used as evidence to determine their credibility. Interviewees–victims and professionals–described these experiences as degrading and traumatising.

The intention of our analytical approach is that the potential and required human rights based response to victims with disabilities is shown to be possible through the practical actions offered by the UN Access to Justice Principles. The challenge is to align these actions into a system which does not currently place the victim and their rights at its centre. This section explores the evidence and implications of the gaps in the Directive before proposing ways they can be practically addressed.

The Charter of Fundamental Rights is part of the legal order of the European Union, and, together with the European Convention on Human Rights to which all Member States are party, these provide a strong normative framework for a justice system that respects,

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[128] European Union's Victims' Rights Directive (Directive 2012/29/EU) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029> accessed 11 May, 2022.

[129] 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). <https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf> accessed on 11 May 2022.

guarantees and upholds the dignity of victims and their rights to an effective investigation and remedy. Fiala-Butora's framework presented under Principle 8 above traces the additional safeguards and mechanisms that need to be in place for people with disabilities' particular experiences of crime and human rights violations. Our recommendations below aim to show how the Directive could and must be revised to give effect to these obligations.

There are vital conversations being led by advocates of an approach to criminal justice that is grounded in protecting and upholding the human rights and human dignity of all those involved in criminal justice. Our contention is that the UN Access to Justice Principles set out, in much of the necessary detail, how this can be achieved in practice for victims with disabilities and as a result, benefit all victims of crime. People with disabilities must be part of this transformative work. They will both positively influence and benefit from its innovations.

Recommendations

This section first sets out general recommendations that are relevant to all aspects of access to justice, followed by specific recommendations that map against the UN Access to Justice Principles which served as a framework for this report's analysis.

General recommendations

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 support required to remove barriers and to have effective access to justice. It should explicitly guarantee access to information and communication 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.

Specific recommendations

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 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.

States must ensure that the legal capacity of people with disabilities is recognised at all levels of the criminal justice system, without discrimination.

- Create a platform to facilitate direct dialogue between people with disabilities and the European Commission in relation to the Victims' Rights Directive, including review, amendment and monitoring processes.

- In partnership with people with disabilities, the Commission should carry out a full review of the extent and use of guardianship orders involving victims with disabilities, assess the violations of the right to legal capacity, and develop plans and recommendations to cease the use of guardianship orders and bring policy and practice into line with the UN CRPD.

- Based on the findings of such a review, the Commission should set standards and issue guidance drawing on the UN Access to Justice Principles – and in partnership with people with disabilities– that includes an explicit prohibition on the interference with the right to legal capacity.

- The Victims' Rights Directive should be amended to explicitly guarantee the right to legal capacity, referring to victims with disabilities. In particular, the practice of discriminatory assessments of victim credibility linked with impairment or disability should be identified as a type of secondary victimisation and prohibited.

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

The Directive and associated Commission guidance do not refer to the principles of universal design or the duty to put in place reasonable accommodations. Perhaps as a result, there is also 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 these principles. Reasonable accommodations are not routinely available at the national level.

- Commission Guidance should be amended to explain the principles of universal design, specify, in practical terms, what these mean in a police and criminal justice setting, and establish standards which can be reviewed and monitored.

- The Directive should be amended to include the right to forms of support which enable effective communication, including sign language, augmentative and alternative communication, and other forms of communication support under Article 7.

- The Slovenia approach regarding provisions for hearing and other sensory impairments for application in other jurisdictions could be drawn on as an example of positive practice, along with any other relevant practice in the EU.

- Information about the criminal justice system — including victims' rights — must be easily and publicly accessible at the national level.
- Any limitation to physical accessibility or information and communication, must be addressed by providing accommodations and access to a range of support services, as well as informal supports that a person chooses.

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

The Directive does not provide a 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 needs based approach to access to justice. In practical terms, this could entail a reframing of the Article to re-emphasise victims' right to directly 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 accommodations to be put in place for them to access their rights under the Directive. The procedural accommodations 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 particular, the right:
    - to understand and be understood (Article 3),
    - to receive information (Article 4 and 5),
    - to remain informed (Article 6),

    - to be provided with an interpreter and translation (Article 7),
    - to be supported (Article 9),
    - to be heard during criminal proceedings (Article 10),
    - and to protection generally (Article 18, 19, 21) and specifically (Articles 22 and 23).

- Support for research into and dissemination of promising practices in dialogue with victims with disabilities regarding identifying and meeting needs, with appropriate information-sharing, throughout the criminal justice process.

- Support for research and feasibility studies into options for universal screening and assessment, and review of the potential of universal screening as a tool for helping to ensure that the information and communication rights of victims with disabilities are respected.

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

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. The Recitals of the Directive merely suggest Member States 'take into account' communication 'difficulties'. This approach 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 disabilities.[130] In practice, our national analysis shows that when 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.

- 'Needs based assessment' should be linked to assessment points in Principle 3 recommendations above. All victims of crime with disabilities should be offered support services, respecting their *right* to access such support (where this *right* does not depend on their *needs* which are often assessed by a police officer, as is now the case under Article 8(1) VRD).

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130 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.

- Develop clear standards, together with corresponding guidance, on what accessible information means, and when and how it should be delivered.
- Establish standards which ensure accessibility of information, including augmentative and alternative communication and easy-to-read, mainstreamed at the national and international levels.
- EU funding and resources should ensure that all states have disability sensitive and accessible support services.
- Ensure additional, explicit obligations on the State to guarantee access for people residing in institutions to their Article 4 and Article 6 rights under the Directive.

Principle 6, Persons with disabilities have the right to free or affordable legal assistance

Access, through legal aid, to a suitably qualified and experienced lawyer can be a communication and information bridge for people with disabilities, which can be 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. 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, goodwill 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.

- Strengthen the Victims' Rights Directive Article 13 and related guidance to ensure victims with disabilities access to their right to legal representation, including ensuring the availability of meaningful information about these rights and the implementation of reasonable and procedural accommodations.

- Reduce the financial burdens and requirements on victims with disabilities to access legal representation, clarify conditions under which legal representation would be an automatic right, and ensure that victims are fully informed about their rights and the options open to them regarding legal representation.

- In clarifying and strengthening rights to legal representation, consider national recommendations, including

    - Ensuring that the right to free legal representation extends to the start of criminal proceedings, in the same way as available for the accused (Czechia).

    - All legal aid lawyers should have the skills, knowledge and experience to represent victims with disabilities (Romania).

- Connecting the need for legal assistance with meeting other needs regarding supported decision-making:

  'A lawyer acting as the person's legal agent could act as a measure of supported decision making. Together with the necessary communication support for instance in the form of support of a communication intermediary or accessible formats of legal documents, appropriate procedural accommodations could be the CRPD compliant alternative to the guardianship order, which is simply a measure of substitute decision making.' (Czechia, 2022, p.40)

  The creation of specific units, 'which provide support to persons with disabilities, victims of violence and crime within legal aid bureaus. These units will include trained professionals who can evaluate the needs of victims within the scope of the needs throughout the prosecution proceedings and the needs for accompanying measures, including provision of shelter and coverage of basic needs, additional personal assistance, psychological and other health care.' (Bulgaria)

- Also linking to Principle 10, develop the necessary training and capacity-building infrastructure for specialist lawyers. For example, either all lawyers would have to undergo a training on how to communicate with clients with various impairments (or vulnerable clients in general), or it would be elective (and more comprehensive), but then only lawyers who have undergone this specialised training would comprise the pool of lawyers who are appointed in these kind of proceedings.

Principle 8 (and 9[3]): 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

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.

Clarify when the definition of 'victim' applies, and in particular draw on recommendations in the Bulgaria report

> *'The authors recommend that the legislative framework in Bulgaria is amended to recognise 'victim' status from the moment a harm is done, along with all the associated rights and obligations.'*

Further, taking a human rights approach to defining and responding to victims in investigation and criminal proceedings, the Directive should be amended to recognise victim status from the moment of the harm (without the obligation to show that a certain type of 'harm' was caused).

Carry out national reviews of police practice to ensure that crimes against people with disabilities are identified and treated as crimes and national review of criminal law to ensure that appropriate instances of ill-treatment are brought within the purview of criminal law.

Undertake a broad review of the nature and prevalence of human rights violations and crimes from the perspective of people with disabilities and use it as a baseline for mapping presence and gaps in remedies as well as access to these remedies. Drawing on the CRPD and the UN Access to Justice Principles, develop a remedies and access to justice framework, which can encompass the breadth of structural and individual violations, acknowledging their need for collective and individual redress, including a consideration of reparations. Ensure that this work feeds into the work foreseen in the EU Strategy on Victims' Rights and other relevant international policy and strategy frameworks.

The responsible bodies (States, EU) should consider reassessing the legal framework *not* from the perspective of criminal law, but asking the larger question of what human rights violations (and ill-treatment) persons with disabilities experience, and what could be an effective remedy? This process could help ensure that the full experience of people with disabilities' is properly considered and this would help ensure that the 'blank space', the area where victims with disabilities do not enjoy protection under the existing framework, is addressed.

Where people are detained in institutions or live at home and are dependent on a caregiver they may not be able to access a phone, police station or other means of reporting an incident active measures must be taken by the State to ensure effective monitoring, reporting and complaints mechanisms in all services involving or accessed by people with disabilities. The Directive should acknowledge this and address explicitly States' duties to ensure access to reporting mechanisms for victims in these situations.

Access and accommodations also be ensured in the pre-investigation stages, even if they might formally not be part of the criminal (or complaint, or administrative) process.

Principle 10:[4] 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 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.

- Implement and monitor police and judicial training, based on UN Access to Justice Principles.

- Training to build the skills of organisations of people with disabilities regarding the rights of victims of crime and the basics of criminal procedure.
- While the research did not focus on whether people with disabilities are involved in the administration of justice as, for example, members of staff, police officers, prosecutors, etc., the system is likely to be less discriminatory if people with disabilities are actually a part of it.

ANNEX A

Voices for Justice National Research Reports

Voices for Justice. Victims of crime with disabilities in Bulgaria.

Aneta Genova and Maria Krasteva, Chance & Support Association

Voices for Justice. Victims of crime with disabilities in Croatia.

Miren Špek and Maja Štahan, Victim and Witness Support Services

Voices for Justice. Victims of crime with disabilities in Czechia.

Anna Sležková, Štěpán Pastorek, FORUM for Human Rights

Voices for Justice. Victims of crime with disabilities in Lithuania.

Ugnė Grigaitė and Erika Leanaitė, Mental Health Perspectives

Voices for Justice. Victims of crime with disabilities in Romania.

Ştefania Dascălu, Oana Dodu and Georgiana Pascu, Center for Legal Resources

Voices for Justice. Victims of crime with disabilities in Slovakia.

Anna Sležková and Štěpán Pastorek, FORUM for Human Rights

Voices for Justice. Victims of crime with disabilities in Slovenia.

Andraž Kapus, Katarina Bervar Sternad, Katarina Ficko, Vito Flaker, Janja Horvat, Sanja Jablanović, Tatjana Knapp, Anđelka Prvulović, Andreja Rafaelič, and Kaja Zoran. Social Protection Institute of the Republic of Slovenia, Faculty for Social Work at the University of Ljubljana, PIC – Legal Center for the Protection of Human Rights and the Environment

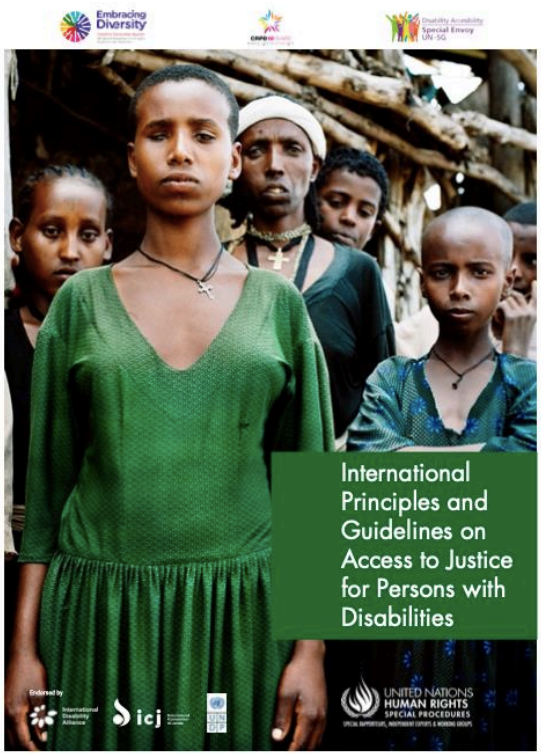
ANNEX B

United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities

The United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities were published in 2020. The stated purpose is,

> *States must ensure equal access to justice for all persons with disabilities by providing the necessary substantive, procedural, and age- and gender- appropriate accommodations and support. The Principles and Guidelines are intended to assist States and other actors to design, develop, modify and implement justice systems that provide equal access to justice for all persons with disabilities (p.6)*

The document sets out 10 principles with guidelines, which are intended as a basis from which 'States can and should align their laws, rules, regulations, guidelines, protocols, practices and policies' (p.8).



International Principles and Guidelines on Access to Justice for Persons with Disabilities

Principle 1

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

Principle 2

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

Principle 3

Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations.

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.

Principle 5

Persons with disabilities are entitled to all substantive and procedural safeguards recognized in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process.

Principle 6

Persons with disabilities have the right to free or affordable legal assistance.

Principle 7

Persons with disabilities have the right to participate in the administration of justice on an equal basis with others.

Principle 8

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

Principle 9

Effective and robust monitoring mechanisms play a critical role in supporting access to justice for persons 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.

ANNEX C

Overview of laws on guardianship

This table gives an overview of national provisions that recognise existing guardianship orders, or allow the appointment of a guardian ad litem by the court.

Table 4: Overview of guardianship laws by project countries

Country	Criminal procedure law allows guardians to replace victims with disabilities?
Bulgaria	Guardianship is governed by the Persons and Families Act in 1949. It is a system which allows the 'guardian' of a person to make decisions regarding their life & essentially take over the persons freedom to express or pursue their own decisions. A guardianship body exists which by law are the mayors of each municipality and in this role, they have the obligation to supervise the actions of all guardians living in the territory of their municipality. In practice however, their control tends to be rather formalistic
Czechia	Either already in place by order of a civil court (according to § 62 in connection with § 465 (1) of the Civil Code), or Guardian ad litem is appointed by a criminal court (Act no. 141/1961 Coll., § 45 (1)) The Code of Criminal Procedure Does not provide a specific explanation to who the guardian ad litem will be, but it does provide that a person who is not an attorney may be appointed, if they consent to their appointment. This same process will take place if the guardian appointed to the victim by the civil court is not suitable or capable to represent them.
Croatia	In criminal proceedings in the Republic of Croatia, a guardian can act as a victim's person of trust in proceedings. It must be noted that the guardian does not take the role of the victim in the procedure, but is entitled to take certain actions on behalf of the victim. The decision regarding the appropriate action to be taken by the guardian is decided by the judge and not by the guardian themselves.
Lithuania	Code of Criminal Procedure, Article 369 The general rule which exists is that a victim's guardian is permitted to partake in all stages of proceedings and defend the interests of the minor or incapacitated individual concerned in proceedings (only if this is in victim's best interests.

Romania	Persons with disabilities in Romania placed under a legal injunction, may not stand in their own name in court and are represented by guardians. This is dictated by Article 289, 295 & 296 of the Law no.221 of 2010.
Slovakia	Either already in place by order of a civil court (§ 27 (2) of the Act no. 40/1964 Coll., the Civil Code or § 29 of the Act no. 40/1964 Coll., the Civil Code. , or Guardian ad litem is appointed by a criminal court Act no. 301/2005 Coll., the Criminal Procedure Code, § 48(3) For individuals with mental disabilities who require support from another person to exercise their procedural rights in practice, the Code of Criminal Procedure relies primarily on the mechanism of guardianship.
Slovenia	Non-Contentious Civil Procedure Act[34] and the Family Code[35] which allow for the deprivation of the legal capacity Article 64 of the Criminal Proceedings Act states that if the injured party is a minor or a person who does lacks legal capacity, their legal representative (in cases of adults without legal capacity, this is a guardian) is entitled to submit all statements and perform all procedural acts which the victim would typically be entitled to perform under the Act. In Slovenian legislation, guardianship for adults is regulated by the Non-Contentious Civil Procedure Act and the Family Code which allow victims to be deprived of their legal capacity.

ANNEX D

Framework for assessment and implementation of procedural accommodations

The table below compares Principle 3[131] of the United Nations' International Principles and Guidelines on Access to Justice for Persons with Disabilities with the procedural rights stipulated in the European Unions' Victims' Rights Directive. The intention is to identify the potential for a comprehensive procedural accommodation assessment and implementation framework which supports victims with disabilities' to access all their rights under the Directive, including their rights to communication and information.[132]

T**he colour code below should be used to help interpret the table**:

Light blue: UN Access to Justice Principles – guidelines for procedural accommodations The text is from the UN International Principles: Principle 3 on procedural accommodations
Yellow: EU Victims' Rights Directive Commentary on whether the procedural accommodations in the UN Access to Justice Principles are explicitly found in the Victims' Rights Directive.

Table 5: Comparison of UN Access to Justice Principles and EU Victims' Rights Directive for procedural accommodations

Principle 3 of the UN Access to Justice International Principles[133].
Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations

131 UN Access to Justice Principles, Princple 3: 'Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations'.

132 The Victims' Rights Directive (the Directive) establishes the minimum standards on the rights, support and protection of victims of crime in the European Union. Due to the nature of EU directives, the Victims' Rights Directive lays down EU member states' obligations in a general manner, without specifying the way of implementation. The Principles and Guidelines on Access to Justice for Persons with Disabilities (hereinafter: UN Access to Justice Principles) is a non-binding source providing an elaborated 'practical tool to support States in designing and implementing justice systems that provide equal access to justice for persons with disabilities, in line with international human rights standards'.

133 United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities (Geneva 2020), <https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/10/Access-to-Justice-EN.pdf> accessed May 9, 2022.

There is no specific mention of procedural accommodations in the Victims' Rights Directive.
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)*
Guidelines
3.1 To avoid discrimination and guarantee the effective and equal participation of persons with disabilities in all legal proceedings, States shall provide gender- and age-appropriate individualised procedural accommodations for persons with disabilities. They encompass all the necessary and appropriate modifications and adjustments needed in a particular case, including intermediaries or facilitators, procedural adjustments and modifications, adjustments to the environment and communication support, to ensure access to justice for persons with disabilities. To the fullest extent possible, accommodations should be organised before the commencement of proceedings.
3.2 States shall ensure the provision of a range of procedural accommodations, while also ensuring that such accommodations are implemented so as to properly balance and respect the rights of all parties by, among other things/
Independent intermediaries and facilitators
(a) Establishing, funding and implementing a programme of independent intermediaries or facilitators trained to provide communication assistance to parties to the proceedings and the justice system to determine whether accommodations and support are necessary and which accommodations and support are appropriate, and to assist with communication throughout the course of the proceedings;
(b) Designing and implementing a programme of independent intermediaries or facilitators in a manner consistent with local procedures and customs, and in line with the Convention on the Rights of Persons with Disabilities;
'Intermediaries', 'facilitators' or any equivalent are not mentioned in the Directive or Commission Guidance. *Article 3: The right to understand and to be understood* clearly signals that all victims have the right to equal access to information and communication in its broadest sense within

the criminal justice process as defined by the Victims' Rights Directive. However, there are no accompanying mechanisms to ensure access to Article 3 rights.
Procedural adjustments and modifications
(c) Adopting procedures for hearings that ensure the fair treatment and full participation of persons with disabilities, including children with disabilities, during proceedings, as appropriate, such as:
(i) Adaptation of the venue;
According to Article 23(2), where a victim is assessed as having specific protection needs during criminal proceedings, they will qualify for the following procedural accommodations 23 (2)(a) interviews with the victim being carried out in premises **designed** or **adapted** for that purpose However, there is no mention of other aspects being adapted, for example, the court venue itself. In addition, these modifications only concern protection needs, not participation rights.
(ii) Appropriate waiting spaces;
There is no specific mention of this in the Directive. *Article 19 Right to avoid contact between victim and offender* this right could be very useful for people with disabilities, however these modifications concern protection needs, not participation rights.
(iii) Removal of cloaks and wigs;
There is no specific mention of this in the Directive.
(iv) Adjustments to the pace of proceedings;

There is no specific mention of this in the Directive.

Article 3 Right to understand and be understood, again, Article 3 clearly signals that all victims have the right to equal access to information and communication in its broadest sense within the criminal justice process as defined by the Victims' Rights Directive. However, there is no accompanying mechanism to ensure access to Article 3 rights for people with disabilities.

(v) Separate building entrances and waiting rooms and protective screens to separate persons with disabilities from others if necessary due to physical or emotional distress;

According to Article 23 (3), where a victim is assessed as having specific protection needs during criminal proceedings, they will qualify for the following procedural accommodations:

A23(3)(a)a. measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology;

A23(3)(b)measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology

Again, these measures are focused on protection. They do not offer support for victims to access their participation rights.

Victims with disabilities do not automatically qualify as having a right to protection as victims with specific protection needs during criminal proceedings according to Article 23. This means that their needs must be assessed and identified during the needs assessment process stipulated by Article 22. Article 22 states that 'victims with disabilities should be duly considered'. This language increases their chance as a group that they will qualify for the right to protection under Article 23, but there is no guarantee. Article 18 Right to Protection, Article 19 Right to avoid contact between victim and offender, Article 20 Protection rights during criminal investigation and Article 21 Right to Privacy are also important for the safety of all victims, and access to these rights, including necessary procedural adjustments, must be guaranteed for people with disabilities.

Article 19 Right to avoid contact between victim and offender. This article strengthens the grounds for a better match between Article 13 Rights under the UN Convention, however, there is no mechanism to support people with disabilities to access these rights in reality.

(vi) Modifications to the method of questioning in appropriate circumstances, such as allowing leading questions, avoiding compound questions, finding alternatives to complex hypothetical questions, providing extra time to answer, permitting breaks as needed and using plain language;
In terms of the investigation stage, according to Article 23 (2), where a victim is assessed as having specific protection needs during criminal proceedings, they will qualify for the following procedural accommodations: 23(2)(b) interviews with the victim being carried out by or through professionals trained for that purpose; 23(2)(c) all interviews with the victim being conducted by the same persons unless this is contrary to the good administration of justice; 23(2)(d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced. In terms of the court process stage, according to Article 23 (3), where a victim is assessed as having specific protection needs during criminal proceedings, they will qualify for the following procedural accommodations: 23(3)(b)measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology; 23(3)(c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; 23(3)(d) measures allowing a hearing to take place without the presence of the public *Article 18 Right to protection*

'…Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying..' These rights are focused on protection. They do not offer support for victims to access their participation rights.
(vii) Use of pretrial video recording of evidence and testimony, if necessary, practical and possible, in such a manner as not to contravene basic rights, such as the right to confront and cross- examine witnesses;
Recital 53, 'Interaction with competent authorities should be as easy as possible whilst limiting the number of unnecessary interactions the victim has with them through, for example, video recording of interviews and allowing its use in court proceedings…' *Further protection rights during criminal investigation under Article 20, as well as privacy Rights under Article 21, strengthen protection, however there is no accompanying mechanism to ensure the procedural accommodation set out in (vii) above to ensure access to these rights for people with disabilities.*
(d) Allowing persons with disabilities, at all stages of the process if they so choose, to be accompanied by family, friends or others to provide emotional and moral support, without replacing, however, the role of an intermediary or facilitator;
Not mentioned within current procedural adjustment assessment framework (Articles 22 and 23) *Article 3(3) directs MS to allow victims to be accompanied by a person of their choice in the first contact with a public authority 'where, due to the impact of the crime, the person requires assistance to understand or be understood'.* Article 8 explains that access to support services for victims should be 'in accordance with their needs', and Commission Guidance says that needs assessment is possible and can be combined with the Article 22 Individual Needs Assessment. However this is not required. The right to support should not be contingent on victims' needs, as explained above if any adjustments are needed to access this right, such adjustments should be identified and put in place.

Article 20 (2) The right to be accompanied by a person of choice applies to all victims. If the victim has a legal representative, this lawyer should be present at interviews. In addition, the victim should be able to bring a trusted person for moral support. *However, intermediaries and facilitators are not mentioned as procedural accommodations in the Directive, thus the importance of distinguishing between the different sources of support and access (i.e. 'intermediary', 'person of support', 'legal representative') is missing. As with other provisions, there is no mechanism to ensure that victims with disabilities can fully access these rights*
Communication support
(e) Ensuring that all processes in the justice system provide the technical and other support necessary for parties,witnesses, claimants, defendants and jurors to use any form of communication as necessary for their full participation, including:
Ensuring access to communication information rights are not part of the Directive's procedural adjustment assessment and implementation framework, which focuses entirely on protection needs.
(i) Assistive listening systems and devices; (ii) Open, closed and real-time captioning, and closed caption decoders and devices; (iii) Voice, text and video-based telecommunications products; (iv) Videotext displays; (v) Computer-assisted real-time transcription; (vi) Screen reader software, magnification software and optical readers; (vii) Video description and secondary auditory programming devices that pick up audio feeds for television programmes;
(f) Supporting communication, in addition to intermediaries or facilitators, through the use of third parties, including:
(i) Note-takers; (ii) Qualified sign language and oral interpreters; (iii) Relay services; (iv) Tactile interpreters;

(g) Ensuring that all interpreters are able to interpret effectively, accurately and impartially, both receptively (i.e. understanding what persons with disabilities are saying) and expressively (i.e. having the skill necessary to convey information back to those persons), while using any necessary specialized vocabulary (e.g. legal or medical) and respecting professional and ethical standards;
Article 3 Right to understand and be understood Article 3 (1) directs Member States to 'take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority'. Article 3(2) directs Member States to ensure that 'communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victims including any disability which may affect the ability to understand or to be understood'. Article 3(3) explains, 'Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.' *Article 7 Right to interpretation and translation.* Article 7(1) explains, Member States 'shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, upon request, with interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings.' The Directive explains how this right applies to other communication and information rights, such as ensuring that key documents and notices are also translated where necessary. However, sign language and other related forms of interpreting and translation such as augmented communication, intermediary services are not identified and defined as procedural accommodations, or included in the term 'any language requirements or other needs'.[134] Further, there is no process for ensuring access to interpretation as a procedural accommodation for people with disabilities. At the moment, it is the victim's responsibility to request interpretation, and the role of the public authority to assess their need, which is not aligned with the CRPD.

134 Ibid, p.12

Requests for and offers of accommodations
(k) Enacting and implementing laws, regulations, policies, guidelines, practices and processes that enable persons with disabilities to request procedural accommodations, including modifications of or support in legal processes, with appropriate protection of their privacy;
(l) Ensuring, throughout the course of legal proceedings, that all participants are advised of the availability of procedural accommodations if needed and desired because of disability;
(m) Ensuring a process for determining the need for and providing procedural accommodations, including communication assistance, to children with disabilities, as well as additional safeguards, when necessary, according to their evolving capacities and their right to have their views heard.
There is no mechanism in the Directive that directs states to ensure that people with disabilities have a specific right to request procedural adjustments, that they are advised of their availability or that ensures a process for determining the need or provision of procedural adjustments throughout an investigation and criminal justice process. *Article 3 Right to understand and be understood (see above for a summary of Article 3)* arguably implies the right to procedural accommodations so that this right can be accessed by people with disabilities.

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' Rights 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 (formerly Mental Disability Advocacy Centre) brings 18 years substantive expertise in research, advocacy and strategic litigation on the rights of people with disabilities.

- Bulgaria: Shans i Podkrepa (Chance & Support Association) brings 14 years experience working with people with disabilities, people from different ethnic groups (including Roma people), women and elderly people, developing new methodologies of social work, and providing direct support.

- Croatia: Udruga za podršku žrtvama i svjedocima (Victim and Witness Support Service-VWSS) brings specialised expertise in providing information, psychological and legal aid to victims of crime, and operates a national call centre for victims of crime.

- Czechia and Slovakia: Fórum pro lidská práva (Forum for Human Rights) brings expertise in human rights advocacy, strategic litigation, research and awareness-raising on the rights of vulnerable groups, including persons with disabilities, and the principle of non-discrimination.

- Lithuania: Psichikos Sveikatos Perspektyvos (Mental Health Perspectives – PSP) brings extensive experience in disability-rights, including implementing a crucial project on enhancing procedural rights of suspects and accused persons with intellectual and/or psychosocial disabilities in criminal proceedings.

- Romania: Centrul de Resurse Juridice (Centre for Legal Resources) has excellent experience and skills in providing complex legal and professional support to people with disabilities who have experienced human rights violations.

- Slovenia: Pravno-informacijski center nevladnih organizacij (PIC - Legal Center for the Protection of Human Rights and the Environment) brings legal expertise in protecting, supporting and defending marginalised and vulnerable groups and provides legal assistance to more than 1,000 people with disabilities each year.

- Slovenia: The Inštitut Republike Slovenije za socialno varstvo (Social Protection Institute of the Republic of Slovenia – IRRSV) leads the research and data collection component of the entire project. It has three decades of experience in evaluation and monitoring service provision for people with disabilities in Slovenia and has coordinated cross-border projects.

- Slovenia: The Faculty of Social Work from the University of Ljubljana (University of Ljubljana) will develop the research methodology for the project and implement it in Slovenia. They have developed action research methods and researched the rights of people with disabilities since the 1980s.

The full and formal name of the project is: Information and Communication: Cornerstones of justice for victims of crime with disability (878604 — InfoComPWDs)

Disclaimer

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